

SAT 79 of 2015

**Chowdhury Abdul Rahim
Vs.
Sk. Khosh Mohammad & Anr.**

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The matter was earlier adjourned on the prayer of the learned counsel for the appellant.

The appellant is not represented.

The appeal appeared in the warning list on 6th March, 2023 with a clear indication that the same shall be transferred to the regular list on 21st March, 2023, since then the matter is appearing in the list. The appellant is having deemed notice of the matter.

The appellate judgment and decree dated 16th December, 2014 affirming the judgment and decree passed by the trial court on 24th August, 2011 is the subject matter of challenge in this second appeal.

We have carefully read the judgment of both the courts below and the grounds of appeal in order to find whether this appeal involves any substantial question of law or not.

The plaintiff filed the suit for declaration that the Kobala deed dated 08.01.1977 in favour of the defendants is fraudulent, invalid and inoperative. The plaintiff/appellant claims that he is the owner of a land situated at Mouja Islampur, R.S Plot no. 51/130. He sold the land to different persons in different dates by registered Kobala except the schedule property mentioned in the plaint. On 10th April, 2004 when he sent his representative to the Rent Controller of that Mouza to pay the outstanding current rents in respect of the suit land, he came to know that the defendants had already paid the

rents of the suit land in his name.

It is alleged that the defendants have prepared a fraudulent deed by impersonation in the year 1977. It is also alleged that the plaintiff's name has been wrongly mentioned as Mia Abduul Rahaman instead of Choudury Abdul Rahim. The plaintiff denied execution of any such deed.

It appears that the defendants did not appear and contest the suit. The suit was dismissed initially on 16th November, 2005 and on remand it was heard and again dismissed by the trial court on the ground that the plaintiff could not establish his title in the suit land inasmuch as since he was dispossessed he should have prayed for possession. The plaintiff also could not explain the reason for not being able to ascertain soon after 1977 about the existence of the deed, the certified copy which was produced and marked as exhibit-4. The official from the ADSR has produced the certified copy of the relevant deed where the signature of the plaintiff on the deed is not being disputed. The burden was on the plaintiff to establish the signature appearing in the impugned deed is forged, which the plaintiff has failed to establish on cogent evidence.

On such consideration, we do not find any reason to admit the second appeal. The concurrent finding of facts does not call for any interference.

The appeal accordingly fails.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage

There will be no order as to costs.

(Uday Kumar,J.)

(Soumen Sen, J.)