

06 12.4.2023

Ct-08

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SAT 133 of 2015
with
I.A No. CAN 1 of 2015(Old CAN No. 10157 of 2015)

Smt. Niva Rani Samanta & Ors.
Vs.
Sri Bhabani Prasad Mukherjee & Ors.

The appellants are not represented.

The defects indicated by the stamp report in its report dated 30.3.2015 have not yet been removed. Since then it is pending.

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 appellants are having deemed notice of the matter.

The appellate judgment and decree dated 6th January, 2015 affirming the judgment and decree passed by the trial court on 30th August, 2011 in a suit for declaration, permanent injunction and recovery of possession is the subject matter of challenge in this second appeal.

We could have dismissed the appeal for non-removal of the defects. However, 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 suit was dismissed on contest. The plaintiffs in the suit had prayed for declaration that the B schedule property is the integral part of the plaintiffs' property. The plaintiffs alleged that the A schedule property includes B schedule property. In order to prove that a local

inspection was held and the report was filed which was marked as exhibit-15. Learned Commissioner in his report stated that the defendants constructed building in the northern side of A schedule property. The plaintiffs were unable to prove that the A schedule property is the part of the B schedule property. The Commissioner report does not come to establish the right over the B schedule property. Learned trial court as well as the first appellate court dealt with the matter in detail on scrutiny of the Commissioner's report and the measurement indicated therein have arrived at a finding that the plaintiffs were unable to prove that the B schedule property confirms the A schedule property.

It is pertinent to mention that P.W 1 during his cross-examination admitted that there was a boundary wall in the eastern side of the property and the observation of the learned Commissioner at the time of local inspection found that there was a boundary wall in the plaintiffs' property and the construction was in progress in the eastern side of the plaintiffs' property. This fact was admitted by the plaintiffs in their evidence, is enough for the trial court to dismiss the suit and the first appellate court to affirm the same.

On such consideration, we do not find any reason to admit the second appeal.

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.)

