

12.04.2023
SL No.7
Court No.8
(gc)

SAT 134 of 2015
CAN 1 of 2015 (Old No: CAN 3713 of 2015)

Sunil Kumar Bhattacharya & Ors.
Vs.
Amaresh Acharya & Ors.

The appellants are not represented, nor any accommodation is prayed for on behalf of the appellants. The appeal is of the year 2015. The matter initially appeared in the Warning List on 6th March, 2023 and thereafter transferred to the Regular List on 21st March, 2023. Since then the matter is appearing in the list. The appellants have due notice about the listing of the matter.

It appears from the report of the Stamp Reporter dated 30.03.2015 that the appeal was preferred with defects. Till date, the defects have not been removed. We could have dismissed this second appeal for non-removal of defects. However, we have read the judgment of the Trial Court as well as the First Appellate Court and the grounds of appeal in order to find out whether the second appeal involves any substantial question of law.

The second appeal is arising out of the judgment and decree dated 20th November, 2014 passed by the First Appellate Court affirming the judgment and decree of the Trial Court dated 30th May, 2007 in a suit for declaration of title and permanent injunction. The learned Trial Judge dismissed the suit as the plaintiffs were unable to prove

its right, title or possession in respect of the suit property. In arriving at the said decision, the learned Trial Court has taken into consideration that certified copy of the order of T.S. No.165/83 is marked as Exhibit-A, certified copy of the decree of T.S. No.165/83 is marked as Exhibit-A/1. The certified copy of warrant to the bailiff to the delivery of possession of the land in Title Execution Case No.6/92 marked as Exhibit-A/2 and the written statement in T.S. No.165/83 marked as Exhibit-A/3 conclusively proved that the title over the suit plot No.621 is in favour of the defendants. The plaintiff deity has prayed for declaration of title over the plot Nos.621 and 622. However, from the documents disclosed in the said proceeding it was clearly established by reason of the aforesaid documents and evidence that the title in respect of the suit plot No.621 was directly and substantially in issue in T.S. No.165/83 and having regard to the decision in the earlier suit followed by delivery of possession in the execution proceeding. The plaintiff cannot have any claim in respect of the said plot. It is barred by res judicata. The learned Appellate Court has also relied upon Order 21 Rule 99 to 101 in rejecting the submission made on behalf of the appellant deity that the said provisions would not be applicable as the deity was not a party in the T.S. No.165/83 or in Title Execution Case No.6/92. The instant title suit was filed in the year 2002 when the bailiff delivered possession of the land in favour of the

defendants in Title Execution Case No.6/92 marked as Exhibit-A/2. It was opposed or objected to by the appellants. If they were in possession and had any right over the suit property, they would have available the provisions referred to by the learned Appellate Court or filed a suit for declaration that the said decree is not binding or obtained by fraud. Had there been any proceeding initiated under Order 21 Rule 97 and 99, the Executing Court could have decided the title of the plaintiffs in the said proceeding.

Although the principle of res judicata may not apply in the instant case having regard to the fact that the deity was not a party in the earlier suit but the deity had adequate knowledge when the possession was delivered by the bailiff in favour of the defendants in the year 1992 and the suit was filed only in the year 2002 for a declaration of title and permanent injunction. The plaintiffs did not resist the execution of the said decree. The question of title ought to have been raised by filing an application under Order 21 Rule 97 to 99 and moreover it is clear from Section 101 of the Code of Civil Procedure that all questions including the questions relating to right, title and interest in the property arising between the parties to a proceeding of an application made under Rule 97 or Rule 99 or the relevance to the adjudication of the application shall be decided by the Court dealing with the application and not by a separate suit.

Under such circumstances, we do not find any reason to interfere with the order passed by the learned Trial Judge and since affirmed by the First Appellate Court.

Accordingly, the second appeal stands dismissed at the admission stage.

In view of dismissal of the second appeal at the admission state, the connected application also stands dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)