

Item-40. 10-01-2023

SAT 140 of 2015

sg Ct. 8

Sk. Mozammel Hossain
Versus
Abdul Hamid @ Mir Abdul Hamid

The matter initially appeared in the warning list on 29th November, 2022 and thereafter transferred to the regular list on 5th December, 2022. There was a clear indication in the list that the matter shall be transferred to the daily cause list on 5th December, 2022 and since then the appeal is appearing in the list.

The appellant also did not appear on the earlier occasion i.e. on 13th November, 2017. The appellant has not taken any step to remove the defects as notified by the Stamp Reporter on 7th April, 2015. It is clear that the appellant is not interested to proceed with the matter.

However, we have perused the judgments of the trial court as well as the first appellate court. The first appellate court by a judgment dated 15th January, 2015 affirmed the judgment of the trial court dated 30th January, 2013 and decree dated 5th February, 2013 passed in a suit for declaration, permanent injunction and alternative partition. The suit was dismissed on contest.

It appears that the appellant has failed to establish its right, title and interest in respect of the property in question. The description of the properties furnished by the appellant was also found to be vague and not corroborated by any documentary evidence. The trial court as well as first appellate court has come to a finding that the plaintiff/appellant is the owner of 5 decimals of land in respect of a deed executed in the year 2007, but until

and unless the property as per the deed executed in the year 1983 comes to the hotchpotch, the mere declaration of title of the plaintiff to the extent of 5 decimals of land in the suit property would not suffice. He would continue to remain co-sharer with the other co-sharers. The trial court as well as the first appellate court has taken into consideration the following facts:

“Exbt. ‘C’ goes o to show that the B.L. & L.R.O., Polba-Dadpur Block has submitted his report in M.P. Case No. 305/08 to the effect that on investigation he found that 7-1/2 sataks of plot no. 704 was possessed by the present defendant which was fenced. Another 05 sataks of the property was with the instant plaintiff and the remaining 2-1/2 sataks was with the present proforma defendant.

Importantly, P.W.-1 in his cross-examination has further admitted that he and the defendant have been in possession of the suit plot no. 704 since the execution of Exbt. ‘A’ i.e. 11.03.1983. Therefore, it is very clear that the aforesaid statement in respect of possession of suit plot and Exbt. ‘C’ corroborates each other.

It also stands established that till date no one has challenged the deed no. 2203 of 1983 marked Exvt. ‘A’.”

The plaintiff has failed to establish its absolute right, title and interest over the 5 decimals of land of the suit property.

In view of the aforesaid, the second appeal stands dismissed at the admission stage. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)