

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

SAT 142 of 2015

**Altaf Hossain Middey & Middya @ Mirdha & Ors.
Vs.
Koyal Ajmira Begum & 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 07.04.2015 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 12.12.2014 passed by the First Appellate Court affirming the judgment and decree of the Trial Court dated 30.05.2011 in a suit for declaration and permanent injunction. The suit was decreed on contest and the plaintiffs were declared to be the co-owners in

respect of the A-Scheduled property. There are other consequential directions in favour of the plaintiffs. This judgment was unsuccessfully challenged in a first appeal. The Appellate Court affirmed the judgment of the Trial Court. The main challenge to the judgment of the Trial Court was that the properties involved to the title suit are Wakf properties as the Commissioner of Wakf, West Bengal passed an order on 3rd October, 1988 included the suit property in the register of Wakf. During trial, it transpired that plot Nos.5391, 5392 and 5393 and 5396 were struck down from the register of Wakf maintained by Commissioner of Wakf by this Hon'ble Court on 20.11.1990 passed in C.O. No.15466W of 1988. The said judgment was marked as Exhibit-X. From the sketch map of the plaint showing the topography of the suit plots described in scheduled 'A' and the Mollapara Masjid described in scheduled 'B' of the plaint it appears that mosque is in plot no.5395 which is contiguous to suit plot numbers 5392, 5396 and 5393 and there is no material to prove and establish that there was accretions of suit plots described in scheduled 'A' of the plaint to Mollapara Masjid described in schedule 'B' of the plaint so as to be part of the Masjid.

It thus appears that defendants/appellants failed to establish by adducing satisfactory evidence that the suit properties described in schedule 'A' of the plaint are the public wakf properties. On the contrary, evidence on the

side of the plaintiffs/respondents is satisfactory and sufficient to establish that they have right, title, interest and possession in suit plot nos.5391, 5392, 5393 and 5396 particularly described in schedule 'A' of the plaint.

These findings are based on cogent evidence and on proper appreciation of evidence.

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

The second appeal, accordingly, stands dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)