

12.04.2023
SL No.9
Court No.8
(gc)

SAT 154 of 2015

Hafizuddin Md.
Vs.
Laxmi Chowdhury & Anr.

The appellant is not represented, nor any accommodation is prayed for on behalf of the appellant. 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 appellant has due notice about the listing of the matter.

It appears from the report of the Stamp Reporter dated 09.04.2015 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 29th November, 2014 passed by the First Appellate Court affirming the judgment and decree of the Trial Court dated 5th October, 2010 in a suit for declaration and other consequential reliefs. The suit was dismissed as the plaintiff was unable to establish his

right, title and interest over the suit land. It appears from the evidence recorded by the Trial Court as well as by the First Appellate Court that beside the finally published ROR, no other deed of title of the plaintiff was filed showing the title of Kasim Mohammad, the father of the plaintiff in respect of the suit land. In absence of any pleading and evidence, it was difficult for the Court to hold that the entire land measuring 7.78 acres was originally owned and possessed by the father of the appellant or that it was partitioned in terms of the provision of the L.R. Act or that the entire suit land has been allotted to the father of the plaintiff/appellant by a partition deed or partition decree. It is well-settled that finally published ROR is not a document of title only presumption of possession may be drawn on the said ROR. The said presumption, however, is rebutted. The respondent has rebutted such presumption by filing a deed executed by Hazra Khatoon in favour of Mohini Mohan Singh marked as Exhibit-A as the chain of title was proved by Exhibit-B and Exhibit-C. The three deeds are the chain deeds by which Hazra Khatoon got ownership of the suit land. The defendants, however, did not file the sale deed No.1279 of 1948, 1257 of 1948 and 1555 of 1952 although mentioned in the written statement. However, in the oral evidence of P.W.-2, Md. Sarifuddin, he has in his cross-examination stated that he knew Hazra Khatoon and he had seen Hazra Khatoon to

possess the said 6 ½ bighas of land but he was unable to say whether the said land was transferred to her by Samiruddin. The said evidence, however, proved that Hazra Khatoon is in possession of the suit plot which he received from her predecessor by dint of three deeds which were not filed by the defendant. Hazra Khatoon, being the predecessor of the plaintiff executed the chain deed vide Exhibit-A and subsequently by dint of the said deed the respondent got the title and possession. However, from Exhibit-A it appears that the plaintiff, Hafizuddin Md. was a witness and, accordingly, he cannot challenge the veracity existence and truthfulness of the said exhibit being an attesting witness to the said sale deed by which Hazra Khatoon got title over 6 ½ bighas of land.

Both the Courts have rightly held that by reason of the aforesaid documentary and oral evidence, the presumption of possession in terms of ROR recorded in the name of the plaintiff was rebutted. There is another aspect of the matter. There was a prayer made in the suit for claiming ownership by adverse possession. However, this could not be substantiated by the plaintiff. The plaintiff's witness has confirmed the possession of Hazra Khatoon over the suit land. The plaintiff was a witness to Exhibit-A. The plaintiff's document, namely, Exhibit-4 shows that part of the suit plot has been recorded in the name of the predecessor of the respondent. On such

consideration of the aforesaid factors, the Appellate Court affirmed the judgment of the Trial Court.

On such consideration, we do not find any reason to admit the second appeal as it does not involve any substantial question of law.

The second appeal, accordingly, stands dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)