

Item-18. 20-04-2023

^{sg} Ct. 8

SAT 198 of 2015

Ajay Kumar Nandi & Ors.
Versus
Dhirendra Kumar Mondal

The matter initially appeared in the warning list on 6th March, 2023 and thereafter transferred to the regular list on 21st March, 2023. There was a clear indication in the list that the matter shall be transferred to the daily cause list on 21st March, 2023 and since then, the appeal is appearing in the list. In spite of having due notice and knowledge that the matter is pending, the appellants are not represented. The appellants have also not taken any step to remove the defects as notified by the Additional Stamp Reporter on 10th May, 2015. It is clear that the appellants are not interested to proceed with the matter.

We could have dismissed the appeal for non-removal of the defects. However, we propose to have a look at the judgments of both the courts in order to find out whether the second appeal involves any substantial question of law.

The judgment of the First Appellate Court dated 31st January, 2015 affirming the judgement and decree of the Trial Court dated 22nd May, 2013 in a suit for declaration and permanent injunction is the subject matter of challenge in this second appeal.

In the absence of the appellants, we have carefully read the judgements of both the courts and the ground of appeal. The essential question that came up before the Trial Court was the right of a path over which the plaintiff has claimed easement of

necessity. The evidence on record would suggest that the plaintiff is the owner of the plot no. 7413 and there is no other way to access the said plot apart from such passage that was blocked by some tin and materials by the defendants. It has come out in evidence that the said passage was blocked with the aforesaid goods and materials. The report of the Local Inspection Commissioner has corroborated the allegation of the plaintiff.

It was on such consideration, both the courts held that the plaintiff is entitled to exercise right of passage over plot no. 7414 along with the defendants.

On such consideration, we are of the view that this second appeal does not involve any substantial question of law and we also do not find any reason to interfere with the order passed by the learned First Appellate Court affirming the judgment of the learned Trial Court.

The second appeal stands dismissed at the admission stage. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)