

25.04.2023
SL No.52
Court No.8
(gc)

SAT 232 of 2015
CAN 2 of 2015 (Old No: CAN 5816 of 2015)

Sri Daso Soren & Ors.
Vs.
Birendra Nath Goswami & 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.

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 appellate judgment and decree dated 19th December, 2014 affirming the judgment and decree dated 21st September, 2011 passed by the Civil Judge in T.S. 229/2006 in a suit for declaration and permanent injunction is a subject matter of challenge in this second appeal.

The learned Trial Judge on the basis of the oral and documentary evidence arrived at a finding that the plaintiff has a good title in the property and the plaintiff is

in possession of the suit property and on that basis decreed the suit in favour of the plaintiff.

Although the judgment of the Trial Court was cryptic but the First Appellate Court has elaborately discussed the matter and ultimately affirmed the judgment of the Trial Court on the basis of oral and documentary evidence. It appears from record that the appellants were adopting dilatory tactics before the Trial Court and the Trial Court being exasperated rejected the prayer for adjournment and proceeded with the matter and delivered a judgment after hearing both the parties on 21st September, 2011.

The First Appellate Court had noticed that in the written statement filed by the defendants, they have admitted the ownership of the property owned by Kumar Atish Ch. Singha, Kumar Adhir Ch. Singha and Kumar Bikash Ch. Singha who had executed the power of attorney in favour of Sri Kalipada Sen for maintaining the suit property coupled with the power to transfer the same. Birendra Nath Goswami on behalf of the plaintiffs deposed as P.W.-2 and in his affidavit-in-chief dated 7th July, 2010 he has clearly stated that the suit property originally belonged to the Singha's and subsequently on the basis of the power of attorney, Kalipada Sen sold the property along with the other suit properties. The said power of attorney is a registered power of attorney allowing Kalipada to sell the properties. The sale deeds executed

by Kalipada were exhibited. P.W-2 has deposed that the original certified copy of the L.R. Khatian is in possession of SBI, Kaliyaganj against the loan taken by him. The record of rights was prepared in his presence. The evidence of P.W-2 along with Exhibits-1, 2, 3 and 4, namely:-

Ext.1 – Bank's form no.1 as per the provision of Section 6 of the West Bengal Agriculture Credit Operation Act, 1973.

Ext.2 – Government rent receipt in the name of the plaintiff.

Ext.3 – Finally published LR Record-of-rights.

Ext.4 – Original purchased deed of the plaintiff being no.1589 for 1998 dated 28.4.1998 executed by Kumar Atish Chandra Singha and others.

clearly established the title of the plaintiffs in the suit property.

The concurrent findings of facts are based on cogent evidence.

Under such circumstances, the second appeal stands dismissed at the admission stage.

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

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)