

28.04.2023
SL No.21
Court No.8
(gc)

SAT 267 of 2015

Gorakh Thakur & Ors.

Vs.

Kalabati Devi & Anr.

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. The appeal is still defective.

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 10th March, 2015 affirming the judgment and decree dated 13th June, 2011 passed by the Trial Court in a suit for eviction and recovery of possession is a subject matter of challenge in this second appeal. The learned Trial Judge decreed the suit on contest. The plaintiff was able to establish a better title than the defendant. The appellants claimed acquisition of title by adverse possession. However, the appellants could not prove the adverse

possession. The Trial Court has relied upon the following decisions:-

- 1) Mahesh Chand Sharma Vs. Raj Kumar Sharma reported in AIR 1996 SC 869;**
- 2) Gauran Devi Vs. Durga Das reported in AIR 1996 HP 112;**
- 3) S.M. Karim Vs. Bibi Sakina reported in AIR 1964 SC 1254;**
- 4) T. Anjanappa Vs. Somalingappa reported in (2006) 2 WBLR (SC) 933.**

in considering the merits of the claim of the appellants with regard to the adverse possession. The deposition of Gorakh Thakur was conserved which would clearly show that he was unable to establish adverse possession. He could not say the date from which the possession became adverse to the true owner. On the contrary, P.W.-1 has clearly stated that they were in permissive occupation and they were also not in possession as they were found to be residing in a different property. P.W.1 in his cross-examination has stated on 14th July, 2008 the defendants have encroached the suit property. The defendants could not establish title over the suit property. There was further encroachment during the pendency of the suit which was also brought to the notice of the learned Trial Judge by amending the plaint. The First Appellate Court considered the materials afresh and agreed that the finding of the learned Trial Judge the defendants have failed to establish adverse possession. The Appellate Court has also taken into

consideration the RSROR and LRROR to show that even otherwise the record supports the possession and title of the plaintiff in respect of the suit property.

The concurrent findings of facts are based on cogent evidence and does not call for any interference.

Accordingly, the second appeal stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)