

03.05.2023
SL No.19
Court No.8
(gc)

SAT 293 of 2015
CAN 1 of 2018 (Old No: CAN 4026 of 2018)

Hasiyat Rahaman & Anr.
Vs.
Abdus Samad & 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.

Re: CAN 1 of 2018
(Old No: CAN 4026 of 2018)

Ignoring the trivial defects, we propose to consider the application for substitution and thereafter the question of admission of the second appeal. The application for substitution was filed consequent upon the death of the respondent No.2 who died intestate on 31.03.2018 leaving behind his legal heirs and representatives as mentioned in Paragraph 2 of the application for substitution. It is stated that the said legal heirs are all major, sui juris and of sound mind.

Under such circumstances, the application for substitution is allowed.

The department is directed to record the death of the respondent No.2 and bring on record the legal heirs and representatives of the respondent No.2 as mentioned in Paragraph 2 of the application within 10 days from date in the memorandum of appeal and all related cause papers.

The application being CAN 4026 of 2018 stands disposed of.

Re: SAT 293 of 2015

The appellate judgment and decree dated 30.08.2014 affirming the judgment and decree dated 15.01.2012 passed by the Trial Court in a suit for declaration of title and permanent injunction is a subject matter of challenge in this second appeal. The Trial Court in a suit for declaration and permanent injunction decreed the suit in favour of the plaintiff and against the defendant Nos.1, 2, 6 and 7 on contest and ex parte against the other defendants. The said suit was decreed after the First Appellate Court remanded the matter to the Trial Court directing the Trial Court to allow the appellants/defendants to rely on expert evidence to disprove the genuineness of the deed dated 24.11.1943 (Exhibit-2). However, it transpires from the judgment and order of the Trial Court and the First Appellate Court that the appellant did not take any steps in this regard, although the Appellate Court was persuaded to remand the matter to the Trial Court for fresh consideration of the

genuineness of the said deed upon expert evidence. The Appellate Court has also directed the Trial Court to take fresh evidence both documentary and oral in relation to the said deed. The Trial Court has recorded that no fresh evidence was adduced. The Trial Court recorded that as there was no evidence of any expert opinion, it can be safely presumed that the said deed was genuine as regards title of the suit property the plaintiff filed certified copies of C.S.R.O.R. The said record of rights disproved the case of the plaintiff. It has been duly recorded by the Trial Court as well as the First Appellate Court.

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

The second appeal stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)