

Item-29. 08-05-2023

sg Ct. 8

SAT 294 of 2015

Chaya Khamurai & Ors.
Versus
Rabindranath Khan.

The appellants are not represented nor any accommodation is prayed for on their behalf.

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 1st July, 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. We have also read the grounds of appeal.

The judgment of the First Appellate Court dated 25th March, 2015 passed by the learned Civil Judge (Senior Division), 3rd Court at Howrah affirming the judgment and decree dated 30th June, 2010 passed by the learned Civil Judge (Junior Division), 2nd Court at Howrah in a suit for eviction is the

subject matter of challenge in this second appeal.

It appears from the judgment of the Trial Court as well as the First Appellate Court that, Sova Rani Jati was a tenant in respect of one room, one kitchen under Joydeb Khan and after her demise, her daughter, Maya Mullick, used to reside in the said tenancy and Joydeb Khan instituted a suit, being Title Suit No. 217 of 1995 before the learned Civil Judge (Junior Division) 2nd Court at Howrah against Maya Mullick in respect of the said tenanted premises and the suit was decreed in terms of compromise and thereafter, Maya Mullick vacated the tenanted portion and the present plaintiff started residing in the said premises.

The plaintiff claimed to be in possession of one room and one kitchen. The plaintiff filed a suit for eviction on reasonable requirement in respect of other premises and evidence on record would show that the requirement of the plaintiff necessitated eviction of the plaintiff from the said premises. The relationship of landlord and tenancy was proved. Obtaining of possession of the respondent/plaintiff in the other suit property was inadequate and insufficient. Moreover, the plaintiff was able to prove that the defendants have acted contrary to Clauses M, O and P of Section 108 of the Transfer of Property Act. This finding of facts does not appear to be perverse.

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 and

decree 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.)