

12.05.2023
SL No.25
Court No.8
(gc)

SAT 303 of 2015

**Gouri Bari
Vs.
Ranibala Das & Ors.**

The appellant is not represented, nor any accommodation is prayed for on behalf of the appellant. 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 defective since 3rd July, 2015. No attempt has been made to remove the defect.

The appellate judgment and decree dated 10th March, 2015 affirming the judgment and decree dated 3rd September, 2008 and 8th September, 2008 respectively passed by the Trial Court in a suit for declaration and permanent injunction is a subject matter of challenge in this second appeal.

We have carefully read the judgment of both the Courts and the grounds of appeal. The learned Trial Court on the basis of the evidence on record has arrived at a finding that the plaintiff was able to prove her title. It further came up from evidence that the defendant No.2 admitted that she has no right, title and interest in Dag

No.363. The controversy was with regard to 'ka', 'kha', 'ga' and 'gha' strip of land whether formed part of Dag No.363 or Dag No.367. The plaintiff was able to prove her right based on the R.S. Khatian and other documents. The Appellate Court considered the order of the Trial Court along with an application for additional evidence. Before the Appellate Court it was urged that the additional documents filed would show that the land over which claim was made is included in Dag No.367. The Appellate Court has posed the question as to whether a strip of land as shown in the schedule of the plaint forms part of 'kha' schedule property. The plaintiff in her pleadings and evidence produced a series of documents that were marked as exhibits to establish her ownership of the entire 34 decimal of land of Dag No.363 purchasing from one Vikari Singha. The said documents would show that the defendants became owner of 10 decimal of Dag No.367 adjacent to Dag No.363 purchasing from one Poolin Behari Maity. The real dispute was whether the 'A' strip of land is the part and parcel of Dag No.363 on its eastern side or whether it is the part and parcel of Dag No.367 on its western side.

Both the Courts on analyzing the evidence had come to a finding that the property purchased by the defendants was at the southern side of the property. It is supported by the report of the Survey Commissioner.

These concurrent findings of facts based on evidence cannot be said to be perverse.

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.)