

03.05.2023
SL No.20
Court No.8
(gc)

SAT 331 of 2015
CAN 1 of 2015 (Old No: CAN 12042 of 2015)

Dilip Kumar Sinha Roy
Vs.
Debu Bhaduri & Anr.

Mr. Pinaki Ranjan Mitra,
Mr. Sugata Mukhopadhyay,
...for the Appellant.

Re: CAN 1 of 2015
(Old No: CAN 12042 of 2015)

The application for substitution was disposed of by the order of the Registrar Administration on 01.04.2016.

The department is directed to take necessary steps in this regard.

Re: SAT 331 of 2015

We have heard the learned Counsel for the appellant. We have considered the judgment of the both the Courts. The suit was filed for declaration and injunction. The plaintiff failed to establish title over a strip of land. The learned Trial Judge as well as the Appellate Court has elaborately dealt with the evidence and held that for the common passage over which a claim is now being made has not been proved. In fact, the plaintiff claimed ownership over the said passage. The plaintiff in the suit has prayed for a declaration that 'B' schedule property is part and parcel of the 'A' schedule

property. The 4 feet wide common passage was shown as 'B' schedule property in the plaint. The plaintiff alleged that the defendants encroached upon the B portion of the property. The Appellate Court on consideration of the pleading found that having regard to the pleading of the plaintiff, he appears to have been dispossessed from the 'A' schedule property but he did not pray for recovery of possession. In any event, the report of the Commissioner was considered wherefrom it was found that the existence of 4 feet common passage as described in 'B' schedule property does not belong to the plaintiff. The plaintiff claimed that he was only the owner of 3 cottahs 5 chittaks of land together with structure of the suit property by virtue of deed of sale being No.1967 dated 08.07.1977.

In view thereof, we do not find any reason to interfere with the concurrent findings of facts based on cogent evidence.

The learned Counsel for the appellant submits that in the appeal, an application was filed for additional evidence but the said application was not considered at the time of disposal of the appeal. We do not find any reflection in the impugned order about any application being filed by the appellant for adducing additional evidence. In absence of production of any order by which such application was taken on record and/or ordered to be considered along with the appeal, we are unable to deal with the issue at this stage.

The second appeal, accordingly, stands dismissed at the admission stage.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)