

10.01.2023
SL No.45
Court No.8
(gc)

SAT 335 of 2015
CAN 1 of 2015 (Old No: CAN 8055 of 2015)

Umesh Chandra Saha
Vs.
Subhas Chandra Saha & Ors.

This matter appeared in the Warning List of 29th November, 2022 with a clear indication that this matter shall be transferred to the Regular List on 5th December, 2022. The appeal is of the year 2015. Since then the matter is appearing in the list. The appellant has due notice of the matter. The appellant is not represented.

The appeal is defective. The matter was adjourned earlier on 14th December, 2015 to cure the defects. The revised report of the Stamp Reporter dated 18.12.2015 shows that all the defects have not yet been cured.

Be that as it may, instead of dismissing the appeal for non-removal of the defects, we have considered the memorandum of appeal along with the judgments of both the Courts. The judgment and order dated 31.07.2014 and 16.04.2015 passed by the First Appellate Court in affirming the judgment and decree of the Trial Court dated 28.01.2013 in a suit for declaration and injunction is a subject matter of challenge in this second appeal. The Trial Court decreed the suit by declaring that the plaintiff is a joint tenant along with the defendant No.1 in the suit property. This judgment was affirmed by the

Trial Court. It appears from the judgment of both the Courts that the plaintiff before the Trial has alleged that the defendant Nos.2 to 5 have no right to lease out the property to the defendant No.1. In this respect the defendant No.1 submits that the property has been leased out to him by the lease agreement duly marked as exhibit A executed by the defendant Nos.2 to 5.

The Trial Court and the Appellate Court considered whether the defendant Nos.2 to 5 has any right, title and interest over the suit property to execute the said deed of lease. Defendant Nos.2 to 5 did not turn up before the Trial Court and the suit was decreed against the defendant Nos.2 to 5. On the available materials-on-record both the Courts found no evidence on record which could assist the Court to come to a conclusion in respect of the right of the defendant Nos.2 to 5 over the suit property. One Pradip Das was the original landlord of the suit property. This has been admitted by the plaintiff and the defendant No.1. They have stated that they have taken joint tenancy from Pradip Das in the year 1979 and has been operating their business from the suit premises and they have produced counterfoil of the rent receipt and other document corroborating the fact of joint tenancy. In view of such, they have also produced the deed of lease marked as Exhibit-A and trade licence in the joint name.

On such consideration, we are of the view that the Trial Court in decreeing suit and the Appellate Court on

correct appreciation of the evidence on record affirmed the said judgment.

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

In view of dismissal of the second appeal, the application also stands dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)