

Item-53. 19-01-2023

SAT 350 of 2016

sg Ct. 8

Smt. Tarubala Naskar
Versus
Dilip Kumar Mondal & Ors.

Miss. Prajjini Das,
...for the appellate

The learned Counsel for the appellant has submitted that in spite of best efforts, no instruction could be received from the appellant.

The learned counsel has produced a letter dated 13th December, 202 addressed to the appellant seeking necessary instruction.

In view of the aforesaid, we allow Mrs. Shonihi Chakraborty, learned Counsel to retire from this matter.

The appellate decree dated 20th April, 2016 affirming the decree passed by the trial court on 23rd December, 2028 in a suit filed under sections 36, 37 and 38 of the Bengal Money Lenders Act is the subject matter of challenge in this second appeal.

Before the trial court as well as the first appellate court, the plaintiff contended that the transaction was not out and out sale of a transaction of loan. She has stated that Falguni was a moneylender in the locality and the market value of the property was Rs.40,000/- per bigha at the relevant time. The appellant stated that she is in possession of the suit property and had paid interest on the mortgage. However, Falguni did not receive any receipt on the plea that until the full amount is paid, she would not issue any receipt. The suit land is still a sali land and the plaintiff

is the owner and is possessing the property by cultivation. The defendant denied the said allegation and contended that the plaintiff received the entire consideration amount of Rs.10,000/- at the time of execution and registration of the sale deed and it was not mortgaged of conditional sale.

The trial court as well as the first appellate court in deciding the intention of the parties being entering into the transaction has extensively dealt with the evidence of both oral and documentary which would show that the plaintiff is not an illiterate person and has consciously executed the said agreement with a consideration of Rs.10,000/-. In fact, contemporary sale deed executed in and around the aforesaid period would show that the consideration paid for the present transaction was fair. The said sale deed also does not contain any clause or re-convenience.

On such consideration, we do not find any reason to interfere with the order passed by both the courts.

The appeal stands dismissed at the admission stage. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)