

Item-22. 16-05-2023
sg Ct. 8

SAT 388 of 2015

Mantu Sk. @ Abdul Mannan, since deceased,
represented by legal heirs, namely, Dulal Sk. & Ors.
Versus
Momena Khatun & Ors.

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

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 10th August, 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 appellate decree dated 25th March, 2015 passed by the learned Civil Judge (Senior Division), Katwa, Burdwan affirming the judgment and decree dated 29th January, 2010 passed by the learned Civil Judge (Junior Division), Katwa, Burdwan, is the subject matter of challenge in this second appeal.

The plaintiffs filed a suit for declaration and permanent

injunction. The Trial Court on consideration of Exhibits 2 and 3 and also on a satisfaction being recorded that Moslem Sekh and Zekrail Sekh are same and identical person, decreed the suit. The title of the plaintiffs is established from the said documents read with RSROR and LRROR. The Trial Court was also otherwise of the view that the plaintiff has better title as opposed to the defendants' no title in respect of the suit property, relied upon the decision of the Bombay High Court in the case of ***Govind Anant Goltekar & Ors. vs. Dasharath Deoba Goltekar*** reported in ***AIR 2006 Bombay 174*** (paragraph 12).

The suit was essentially in respect of khatian no. 1037 for declaration of title only in respect of 'ka' scheduled property out of 'kha' schedule suit property which is part and parcel of 'gha' schedule suit property. In the plaint, the plaintiffs have prayed for their title on 'ka' schedule suit property and in joint possession with other co-sharers. The claim is duly proved by the record of rights. These findings are based on cogent evidence.

Under such circumstances, we do not find any perversity in the said findings.

The second appeal stands dismissed. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)