

24.01.2023
SL No.11
Court No.8
(gc)

SAT 453 of 2015
CAN 1 of 2015 (Old No: CAN 10209 of 2015)

Md. Abdul Hai Mondal & Ors.
Vs.
Noor Islam & Ors.

Md. Farhaduddin,
Mr. Rahul Verma,
...for the Appellants.

We have heard the learned Counsel for the appellants.

The judgment and decree of the Trial Court was reversed by the First Appellate Court on the ground that the Trial Court has failed to consider that the plaintiffs were unable to prove their case of easement. It appears that the plaintiffs/respondents prayed for right of easement for egress and ingress over the “Ka” schedule property which, according to the plaintiffs, is the property where such right has to be exercised. The plaintiffs contended that there is a passage in south-west corner in Dag No.2956 for ingress and egress to the mosque. The claim of the plaintiffs is of easement by customary usage for time immemorial. Before the First Appellate Court, it was argued that the P.W.-1 in his cross-examination had admitted that there is another passage for ingress and egress to their house over Plot No.2961. The present appellants supported the judgment, in fact, we have read the judgment of the Trial Court which has not discussed

the evidence at all. It was vague. The First Appellate Court on the basis of the appreciation of evidence found that all the documents relied upon by the plaintiff No.1 are in relation to the ownership of the plaintiff No.1 and his sons in respect of the disputed properties. There is no documentary or oral evidence to show that “Ka” schedule property is used as passage by the plaintiffs for a long period of time. No local inspection has been held by the plaintiffs to prove their case. P.W.-1 in his cross-examination had admitted that they have alternative passage for ingress and egress to their land. There was no independent witness corroborating the case of the plaintiffs that the plaintiffs have been using “Ka” schedule property as passage for more than 20 years without any interruption. No neighbour or any person from the locality conversant with the facts has come up and deposed on behalf of the plaintiffs stating that the plaintiffs used the passage for more than 20 years.

In absence of such evidence, we feel that the First Appellate Court was justified in reversing the judgment passed by the Trial Court.

The second appeal, accordingly, stands dismissed at the admission stage as it does not involve any substantial question of law.

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

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.)