

58 19.01.2023

Ct-08

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SAT 451 of 2016
with
I.A No. CAN 1 of 2016(Old CAN No. 10560 of 2016)
Kashem Khan & Anr.
Vs.
Sri Dulal Chandra Das & Anr.

The appeal is defective. However, no attempt has been made to remove the defects. The appeal is of the year 2016.

The appeal appeared in the warning list on 29th November, 2022 with a clear indication that the same shall be transferred to the regular list on 5th December, 2022, since then the matter is appearing in the list. Therefore, the appellants have due notice.

The defects notified by the stamp reporter in his report dated 06.10.2016 have not yet been removed by the appellant.

Previously on 4th April, 2017 leave was granted to the appellants to remove the defects when the learned advocate representing the appellants appeared.

The appellate decree dated 19th August, 2016 affirming the judgment and decree passed by the trial court on 16th June, 2015 in a suit for declaration and permanent injunction is the subject matter of challenge in this second appeal.

In spite of giving several opportunities, the appellants did not file the certified copy of the judgment and decree of the trial court.

We have carefully gone through the judgment of the first appellate court.

We could have dismissed the appeal for non-removal of defects. However, we propose to find

out any substantial law is involved in this second appeal.

It appears that the appellants challenged the decree of the trial court on the ground that the trial court made out a 3rd case and failed to appreciate the defence of the defendants.

The trial court did not properly appreciate the report of the enquiry officer of B.L&L.R.O, Faridpur at Durgapur in M.P case and the report filed by the learned Commissioner from which it appeared that the plaintiffs are not in possession of the suit property.

The claim of the plaintiffs is not ownership by purchase but appreciation of ownership by adverse possession. They did not state the name of the original owner but they claimed ownership and all the three ingredients to prove adverse possession i.e. nec vi nec clam nec precario have been established at the trial. The report of the Commissioner would show that the property is a vacant land. By producing several documents the plaintiff has proved that the suit property is owned and possessed by them and the defendants had no right, title and interest over the suit property. The defendants could not produce any document to prove ownership on a better possessory right as title.

In view of the said findings arrived at by the first appellate court in affirming the judgment of the trial court cannot be said to be perverse.

Under such circumstances, the appeal accordingly fails.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage along with CAN 10560 of 2016.

There will be no order as to costs.

(Uday Kumar,J.)

(Soumen Sen, J.)