

13.01.2023
SL No.9
Court No.8
(gc)

SAT 503 of 2015
CAN 1 of 2015 (Old No: CAN 11900 of 2015)

Prabir Kumar Kundu
Vs.
Ashis Kumar Samanta

Mr. Sayantan Chattopadhyay,
...for the Appellant.

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. Since then the matter is appearing in the list.

An adjournment is prayed for on behalf of the appellant.

The appeal is pending since 2015 without any attempt being made to move the second appeal. Mr. Sayantan Chattopadhyay, learned Advocate appears and prays for an adjournment. Unfortunately, neither Mr. Rabi Sankar Chatterjee, Advocate nor Mr. Suman Sankar Chatterjee, Advocate who have been engaged to this matter appear to move the second appeal. It only shows that the learned Advocate engaged in a matter like this has sent a junior member to pray for an adjournment who is no way connected with the matter. We strongly deprecate this kind of practice of sending the junior to seek adjournment without proper instruction. Accordingly, we politely decline the prayer for adjournment. Reason for non-appearance is quite

obvious as the appellate decree was passed on 24th July, 2015 by which the judgment and decree of the Trial Court dated 28th November, 2014 was affirmed.

We have carefully read the judgment of the First Appellate Court as well as the Trial Court. Undoubtedly, the tenancy was determinable under Section 106(1) of the Transfer of Property Act and this precisely was done by the plaintiff. The service of notice was duly proved. Although it appears from the judgment of both the Courts that an attempt was made to make a claim of pre-emption but the Trial Court as well as the First Appellate Court has recorded that Ashis Kr. Samanta on 17th May, 2011 purchased the suit property to the extent of 3 decimals of land along with pucca structure being plot no.332 from the previous owner. This document is not under challenge. The appellant before the First Appellate Court as well as the Trial Court was unable to produce any materials relating to the pre-emption case filed before the Trial Court. The L.C.R. does not contain any proceeding or order of any pre-emption case which the appellant referred to in his objection before the Trial Court as well as before the First Appellate Court. The title deed was proved in accordance with law. The L.R.R.O.R (Exhibit 3) shows possession of the plaintiff over and in respect of the land. Tax receipts have also been produced to show possession and title of the plaintiff over the suit property. The concurrent finding of facts based on such oral and

documentary evidence does not appear to be perverse and, accordingly, does not call for any interference in the second appeal. No substantial question of law is involved in the second appeal.

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.)