

09 17.01.2023
AN Ct. No. 08

SAT 584 of 2015
With
IA No. CAN 1 of 2016 (Old No. CAN 172 of 2016)

Subhadra Swami & ors.
vs.
Kartick Chandra Sur & ors.

The file is defective. On 29.03.2016, on the prayer of the learned counsel appearing for the appellant, the matter was directed to go out of list for the time being with liberty to mention. The Stamp Reporter in its report dated 30.12.2015 has indicated various defects. The Stamp Reporter was unable to assess the Court fee stamp paid without furnishing of the verification of the valuation statement. The certified copy of the decree of the learned trial court as well as the first appellate court was not filed.

This matter was appearing in the Warning List of cases since 29.11.2022 until it was transferred to the regular list on 05.12.2022 and since then the matter is appearing in the list. The appellant has deemed to have due notice about the pendency of the appeal. In spite of such notice appellant is not represented. It clearly shows that the appellant is not interested to proceed with the appeal. No steps have been taken in the meantime to remove the defects either.

The order of the appellate decree dated 06.10.2015 affirming the judgment and decree dated 28.09.2012 passed by the learned Judge, Presidency Small Causes Court in T. S. No. 198/2005 is a subject matter of challenge in this second appeal.

The plaintiffs filed the suit for eviction on the ground of reasonable requirement sub let and default. The learned trial court decreed the suit on the basis of evidence adduced by the parties and also on consideration of documentary evidence. The learned trial court as well as the appellate court has arrived at a finding that the plaintiffs have been able to prove reasonable requirement of the suit premises. The plaintiffs require the suit premises for their own use and occupation.

The appellant no. 1 has only one room in the suit premises and his family consists of himself, his wife and two daughters of which one is married. The plaintiff no. 2 has no room in the suit premises and his family consists of his wife and one married son and one married daughter. His son alongwith his daughter-in-law and grand children require accommodation in the suit premises. The plaintiff no. 3, his wife and one son have only one room in the suit premises. Similar is the case of plaintiff nos. 4 to 6.

These facts clearly establish that the appellants are in need of more space for comfortable living. The plaintiffs have been able to establish service of notice of eviction upon the defendants taking into consideration the aforesaid factors and also the report filed by the Commissioner in Exhibit 8 and 8/1 the said suit was decreed. The appellate court on appreciation of evidence has affirmed the said decree. The concurrent findings of case are based on evidence and does not call for any interference.

Accordingly, the instant second appeal is dismissed at the admission stage. Consequently, the connected application also stands dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)