

Sl. No.9
10.09.2024
Court no.13
sp

FA 227 of 2014
With
CAN 3 of 2024
Md. Jahidur Hussain @ Md. Zahid Hussain & Ors.
Vs
Sri Bijoy Kumar & Ors.

Mr. Probhat Bhattacharya,
Md. Habibur Rahman

...for the appellants.

CAN 3 of 2024

1. CAN 3 of 2024 has been filed seeking restoration of the appeal.
2. Sufficient grounds are available to explain the absence of the appellant and his learned Advocate on record on 30th July, 2024.
3. Let the appeal be restored to its original file and number.
4. CAN 3 of 2024 is allowed and disposed of.

FA 227 of 2014

5. The appeal is directed against judgment and order dated 17th July, 2010 passed by the learned Civil Judge (Senior Division), Islampur in Title Suit No. 20 of 2007.
6. The plaintiff/respondent filed a suit claiming that the defendants had encroached upon .28 decimals of land belonging to him. The plaintiff's title stood clearly

traced in respect of Khatian No. 334. The plaintiff purchased the property by registered deed dated 2nd April, 1976 being No. 7403 of 1976 from Ramgopal Das and Ezaz Ahmed.

7. Pursuant to a Mutation Case No. 5 of 1996 after due enquiry, 1.29 acres of land in the said Khatian No. 334 was recorded in the name of the plaintiff/respondent. He has been paying rent to the State since 1976. The plaintiff filed the suit for declaration and possession in respect of .28 decimals of land (Schedule- B) forcibly occupied by the appellants/defendants.

8. Schedule- A comprised in 1.23 acres. The said .28 decimals of land under Schedule- B was appertaining to the National Highway-31. The said land also adjoined several other Khatians. The defendants claimed that their names are recorded in the adjoining Khatians and have exhibited a Sale Deed being No. 21051 of 1975. The parties to the said deed are not known.

9. Apart from the above, there was no other document produced by the defendants. The trial Judge appointed a survey commissioner who undertook measurement of the suit property comprised of 1.29 acres. The demarcation and measurement of the survey commissioner tallied with R.S. Map, the plot mentioned in the Kobala relied upon by the plaintiff and the

Khatian Maps. The plaintiff's land comprising of 1.29 acres came to be clearly demarcated out of the main suit plot of 1.92 acres and the chain of transfers which occurred thereunder. The plaintiff exhibited his sale deed and ROR. The report of the commissioner and the evidence of the other witnesses clearly supported the claim of the plaintiff. The sketch map, field book of the commissioner was duly exhibited in the Court below.

10. Based on the above, the trial Judge found that the plaintiff had clear title to Schedule- B to the property being .28 decimals which was encroached upon by the defendants. The defendants could not deny or upset the findings of the survey commissioner.

11. While relying upon certain R.Ss and L.Rs entries, the defendants appears to have tried to create a cloud on the title and extent of the plaintiff's land. An entry on record of rights can at best indicate a possession. The title of the plaintiff and the entry of his name in the record of rights could not be upset or disputed by the defendants in course of the evidence in the suit.

12. In the backdrop of the above, the trial Court was justified in passing a decree of declaration and possession and permanent injunction in the suit against the appellant/defendant in favour of the plaintiff.

13. In view of the above, this Court is of the view that the impugned judgment and decree calls for absolutely no interference whatsoever.

14. F.A. 227 of 2014 shall stand dismissed.

15. The Registry shall inform the trial Court of the instant order.

16. The Registry shall also notify the respondents of the instant judgment.

17. There shall be no order as to costs.

18. Let the TCR, if any, be returned to the Court below.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)