

30th April, 2024
(D/L No.13)
(SKB)

SAT 201 of 2023
With
CAN 1 of 2023

Keya Chandra @ Keyha Chandra
Versus
Alpana Kumar @ Alpana Kukmar and others

Mr. Dyutiman Banerjee,
Mr. Arnab Sinha,
Mr. Amartya Basu,
Mr. Vishal Mallick,
Mr. Argha Banerjee
... for the defendant/appellant.

Mr. Soumya Roy,
Ms. Benazir Kazi
... for the plaintiffs/respondents.

1. Heard learned counsel for the defendant/appellant.

He urges before this court to accept two substantial questions of law which are as follows:

- a) Whether in case of postal service of notice under Section 106 of the Transfer of Property Act, the actual service can be presumed by the court without evidence to that effect by the plaintiff on the face of denial by the defendant of having received the notice.
 - b) Whether learned courts below have erred in not considering the fixation of a collapsible iron gate by the defendant/appellant to be permanent one or temporary one as it could have been removed at any time.
2. This appeal has arisen out of a suit between the landlords/plaintiffs/respondents and the tenant/

defendant/appellant and the plaintiffs/landlords having been successful in both the courts below, the tenant/defendant/appellant before the lower appellate court has preferred the second appeal.

3. So far as the second question of law is raised, this being a pure question of fact, same cannot be taken to be a substantial question of law within the ambit of Section 100 C.P.C.
4. The first question regarding service being postal service and on perusal of the impugned judgment, we having found that there is clear finding to the effect that the address on the envelop of the notice was correct, presumption under Section 27 of the General Clauses Act is available.
5. In view of such fact, the first question also cannot be considered to be a substantial question of law within the ambit of Section 100 C.P.C.
6. We, therefore, decline to admit this second appeal and the same being SAT 201 of 2023 is dismissed.
7. Accordingly, all the connected applications are also dismissed.
8. There will be no order as to costs.

(Chitta Ranjan Dash, J.)

(Uday Kumar, J.)