

D/L.26.
March 26, 2025.
MNS.

SAT No. 51 of 2025
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CAN 1 of 2025

Saraswati Das and others
Vs.
Sri Moliram Das and others

Mr. Pinaki Dhole,
Mr. Kunal Ganguly,
Ms. Srijita Mondal,
Mr. Rabindra Kumar Pathak

... for the appellants.

1. Insofar as the first defect pointed out by the Additional Stamp Reporter is concerned, we find from the decree of the First Appellate Court that respondent no. 4 Chandi Das was mentioned as proforma respondent and as such, there is no need to send down the records for correction of the First Appellate Court's decree.
2. Regarding the second and third defects, leave is granted to the learned Advocate-on-record for the appellants to carry out the necessary rectifications in the name of the learned First Appellate Judge as appearing in the preamble of the Memorandum of Appeal as well as incorporate the name of the learned Trial Judge in the said preamble during the course of the day.
3. The Second Appeal is now taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

4. The present Second Appeal will be heard on the following substantial questions of law:

- i) Whether the learned First Appellate Judge substantially erred in law in reversing the judgment and decree of the Trial Court on the premise that the suit is bad for non-joinder of the State/ Government as a necessary party, in view of the suit primarily being for eviction of the defendants and the mere fact that a defence was taken that the suit property is vested does not make the State a necessary party?
- ii) Whether the learned First Appellate Judge substantially erred in law in reversing the judgment of the Court of first instance on the premise that the plaintiffs/appellants have failed to prove their title, by overlooking that a presumption of correctness should have been attached to the Records of Rights, the extracts of which have produced by the plaintiffs to show that the suit property is recorded in the name of the plaintiffs, and that in a suit for eviction of a licensee/trespasser it would suffice that the plaintiffs prove their better title over the defendants?

Re: CAN 1 of 2025 (application for stay)

5. Learned counsel for the appellants, in support of the application for stay, submits that the appellants apprehend that on the premise of the findings of

the learned First Appellate Court, the title of the plaintiffs may be disputed before other forums.

6. However, since the matter is sub judice in the present appeal, we do not find any reasonable basis of such apprehension.

7. Moreover, by the impugned judgment and decree of the learned First Appellate Court, the eviction suit of the plaintiffs has been dismissed. It may be noted that no relief of declaration of title of the plaintiffs was sought in the suit and as such, the observations of the learned First Appellate Court on title do not have any bearing as such in any event.

8. Since the impugned decree of the learned First Appellate Court had the effect of dismissing the eviction suit of the plaintiffs, there is no scope of grant of stay as such.

9. Accordingly, CAN 1 of 2025 is disposed of by directing the appellants to put in due requisites and postal costs for service of notice of appeal on the respondent nos. 1 to 4.

10. In view of the proforma respondent nos. 5 to 11 being the co-plaintiffs with the appellants in the Trial Court, service of notice of appeal on the said proforma respondents is dispensed with.

11. The Trial Court records shall be brought by special messenger at the cost of the appellants, to be deposited within a week from date.

12. The appellants shall prepare and file the requisite number of informal paper books without comparing with the records within four weeks from the date of service of notice of arrival of the Trial Court records on the learned Advocate for the appellants.

13. Leave is granted to the parties to mention the appeal for inclusion in the list for hearing before the appropriate learned Single Judge having determination as and when the same is ready for hearing.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)