

10.08.2022
SL No.162
Court No.8
(gc)

SA 131 of 2011

**Bireswar Bhattacharya
Vs.
Buro Bhattacharya & Ors.**

The appellant is not represented, nor any accommodation is prayed for on behalf of the appellant. The matter was heard-in-part on 5th July, 2022. Thereafter, the matter was appeared in the list but none had represented on behalf of the appellant.

In view thereof, we propose to consider the admission of the second appeal on the basis of the available record.

The second appeal is arising out of a decree dated 6th June, 2003 passed by the learned Additional District Judge, 2nd Court, Murshidabad affirming the judgment and decree dated 18th June, 2001 passed by the learned Civil Judge (Junior Division) Additional Court, Berhampore in Other Suit No.92 of 1999. The matter involves an application under Section 22 of the Hindu Succession Act. The appellant has claimed preferential right over and in respect of the properties and claiming himself to be a co-sharer of the property in question. However, both the oral and documentary evidence clearly establish that the suit property was partitioned and both the Courts below relying upon the decisions of

Gauhati and Orissa High Courts in ***AIR 2000 Gauhati 117 (Krishnapada Roy @ Saha Vs. Parimal Chandra Saha & Anr.)*** and ***AIR 1988 Orissa 285 (Bhagirathi Chhatoi Vs. Adikanda Chhatoi & Ors.)*** have arrived at a conclusion that after the partition is complete and the parties are in possession of demarcated and defined share in respect of 'ka' and 'kha' schedule property, the question of preemption would not arise. The appellant ceased to become a co-sharer under Section 22(1) of the Hindu Succession Act by reason of partition. The impugned deed is not a sale deed but a long term lease deed where the right, title and interest has not been transferred but only right of enjoyment of 'ka' schedule property for a long term has been transferred. The view expressed by the Trial Court is justified. The property was partitioned by registered instrument between the plaintiffs and the defendant No.1 on 26th November, 1973 and the 'ka' schedule property has been exclusively allotted to defendant No.1 and as the defendant No.1 has leased out the same to the defendant No.2 for a long term, the preferential right to acquire the property under the said Section is not available to the plaintiffs.

Accordingly, the second appeal fails as it does not involve any substantial questions of law.

The second appeal being SA 131 of 2011, accordingly, stands dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)