

16 06.4.2022
Sc Ct. no.8

SA 57 OF 2020
with
I.A. No. CAN 1 OF 2018
(Old No. CAN 4577 OF 2018)

Sri Mintu Santra & Ors.

Vs.

Sri Probodh Santra & Anr.

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das.

.... For the Appellants

Mr. Nilanjan Bhattacharya

....For the Respondents

By consent of the parties the second appeal is taken up for hearing and disposed of by this common order.

In order to ascertain whether the second appeal involves any substantial question of law on which the second appeal could be admitted, we have heard Mr. Tanmoy Mukherjee, learned counsel representing the appellants and Mr. Nilanjan Bhattacharya, learned counsel representing the respondents.

The case is as interesting as some of the characters featured in the second appeal and had their historical existence in Mahabharata.

The appellants and the defendants are all claiming to be the lineal descendants of Parikshit and Janmenjoy. Both are unfortunately dead. The appellants contend

that vendor Durgarani Dolui is a co-sharer of the suit property and by virtue of a sale deed no. 3181 of 2012 acquired right, title and interest to the extent of the share of Durgarani Dolui in the suit property and, accordingly, they became the co-sharer of the suit property.

Mr. Mukherjee appearing on behalf of the appellants relied on the judgment of this Court in ***Bachaspati Bhattacharya & Ors. -vs- Mira Bhattacharya & Ors.***, reported in **2008 (3) CHN 763**. The said decision clearly deals with the proposition that if a co-sharer is not satisfied with the joint possession in a joint property, his remedy lies by filing a suit for partition and until the partition is effected all the co-sharer have right in every part of the property and as such, one co-sharer cannot restrain the other from exercising their right over any part of the property without claiming partition thereof. In order to apply the said proposition one has to cross the hurdle that when the appellants became the co-sharer by virtue of the aforesaid sale deed. There is no doubt that the plaintiffs are the co-sharers of the property in question. The mother of the appellants is also a co-sharer. However, the present appellants are not claiming co-ownership of the property on the basis of the title of their mother but on the basis of the deed of sale being no. 3181 of 2012.

Before the trial court the defendants produced the Warrison certificate issued by the Dakshin Sankrail Gram

Panchayat and two Aadhar Cards of Durgarani Dolui and Shibu Dolui to prove that Durgarani Dolui and Shibu Dolui are the daughters of Parikshit Dolui. Apart from the aforesaid evidence no other evidence was produced in respect of their claim that Durgarani Dolui had the title over the suit property .

It transpires during evidence that Janmenjoy is a son of Parikshit but the existence of daughters through Parikshit was not proved and could not be proved at the trial.

The appellants in all fairness has stated that they had no knowledge whether their father has any relationship with Janmenjoy and Parikshit. This could have been proved by Durgarani Dolui and Shibu Dolui. Enough opportunity was given to the appellants to produce Durgarani Dolui and Shibu Dolui to prove their case and to remove the cloud of uncertainty hovering over the right of Durgarani Dolui as lineal descendants of Parikshit to part with their share in the property in question. Once it is found that the biological rights of Durgarani Dolui and Shibu Dolui could not be placed to Parikshit it would necessary as a corollary to it, it can be safely concluded that Durgarani had acquired no right and interest in the suit property.

Interestingly Durgarani was alive at the time of trial and the D.W. 1 during his cross-examination has clearly

stated that he produced Durgarani Dolui and Shibu Dolui to disprove the claim of the plaintiff at the trial.

We have carefully gone through both the orders. The appellate court had granted injunction in the cross-objection filed by the plaintiff as the trial court refused to pass injunction order on a satisfaction being recorded that the appellants are not co-sharer. Ratio of the decision relied upon by Mr. Mukherjee would apply only if the appellants could establish that they are co-sharer. The finding of fact arrived at by the trial court should be based on preponderance of probabilities gathered from a wholesome reading and meaningful reading of the evidence on record.

On such consideration we do not find perversity in the findings arrived at by both the courts. In view thereof, the second appeal is not admitted and stands dismissed as no substantial question of law is involved.

However, there shall be no order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)