

14.11.2022
SL No.47
Court No.8
(gc)

SA 35 of 1999

**Rupa Soren & Ors.
Vs.
Anada Pal since deceased
Gita Pal & Ors.**

The appellants are not represented nor any accommodation is prayed for on their behalf. The appellants were also not represented on the earlier occasion.

The appellate decree dated 19th September, 1994 affirming the decree passed by the Trial Court on 31st January, 1994 in a suit for partition, permanent injunction is a subject matter of challenge in this second appeal. We have considered the materials on record and the memorandum of appeal to find out if the second appeal involves any substantial questions of law or not.

The dispute between the parties involves execution of a “Binanama Patra” in favour of the plaintiffs executed by one Khandu Soren on 19th March, 1968 by which he allegedly agreed to transfer the suit property to the plaintiffs within one year from the date of execution of the Binanama Patra (i.e. sale deed).

The Trial Court as well as the Appellate Court found that Khandu had obtained necessary permission from the Tribal Welfare Officer under Section 14(c) of the West Bengal Land Reforms Act before executing the said

document and since Khandu Soren did not perform his part of the contract, the plaintiff filed a T.S.No.64/69 for specific performance of the contract that was decreed by the Trial Court and ultimately a deed of sale dated 25-04-1974 was executed through Court on payment of the remaining consideration amount by the plaintiff. The plaintiffs claimed their right on the strength of the said decree and on the basis of the order passed in T.Ex. No.5/73. The defendants challenged the said decree. However, it was not the case of the defendants that Khandu Soren was not a party to the said proceedings or defendants did not receive any notice or Khandu Soren had no notice of the said proceeding. Exhibit-2 "Binanama Patra" dated 19th March, 1968 clearly establish a contract between Khandu and the plaintiffs and in terms of the said agreement Khandu received a sum of Rs.1900/- as advance against the agreed consideration of Rs.2000/-. Khandu along with Chabi filed a petition before the Tribal Welfare Officer praying for permission and the said permission was obtained on 14th February, 1968 that was marked as Exhibit-4. The time limit for the sale of the suit land was six months from 16th February, 1968 and consideration amount was not less than Rs.2500/-. The total land involved in the sanction order was 1.69 acres and the land transferred by Khandu Soren was 1.55 acres. The sale of 1.55 acres of land at a consideration of Rs.2000/- did not violate the condition regarding valuation fixed by the Tribal Welfare Officer.

The validity of the said agreement of sale has been decided in T.S.No.64/69.

In view thereof, the Trial Court arrived at a finding that the plaintiff has 14 anna 13 gonda 1 kara and 1 kranti share in the suit property. The Appellate Court on appreciation of the evidence and on consideration of the oral and documentary evidence concurred with the finding of the Trial Court. The concurrent findings of facts based on cogent evidence are not to be interfered with in the second appeal.

Accordingly, the second appeal being SA 35 of 1999 stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)