

14.02.2022
SL No.19
Court No.8
(gc)

**FMA 101 of 2022
With
CAN 1 of 2022**

**Manoranjan Giri
Vs.
Sri Anurup Panda & Ors.**

(Via Video Conference)

Mr. Syed Chandan Hossain,
Mr. Kapil Guha,
Md. Apzal Ansari,
.....for the Appellant.

This appeal is arising out of an order passed by the learned executing Court in connection with an application under Order 21 Rules 97, 98, 99, 100 and 101 of the Code of Civil Procedure. The petitioner/appellant having suffered a decree resisted the execution of it on a very flimsy ground. In the said application, the petitioner alleged that the opposite parties, namely, the decree-holders have no right, title, interest in 49 decimal property of suit dag number 2873, nature of the land has been described as 'jal' but the said property was allotted to the opposite parties by the learned Partition Commissioner and on the basis whereof the final decree was drawn up.

It appears from evidence that the predecessor of the petitioners and the decree-holders, namely, Jibankrishna Giri purchased 49 decimal property in suit dag number 2873, nature of the land has been described as 'jal', from Bimal Kumar Panda by virtue of registered sale deed which was marked as Exhibit-1. 49 decimal land in dag

no.2873, nature of the land has been described as 'jal' and was mentioned as Schedule A of the suit property. During evidence it transpired that Bimal Kumar Panda had 24.5 decimal property in suit dag number 2873 at the time of execution of registered sale deed but it was mentioned as 49 decimal. It is obvious that a vendor cannot convey better title than what he possesses, is rightly observed by the learned Trial Court relying upon the judgment of the Hon'ble Supreme Court reported in **2010 (6) SCC 358**. On the wholesome principle it was observed that nobody can transfer any right better than what he had in respect of the land in question. It was decided that Exhibit-1 cannot convey better title than Bimal Kumar Panda in rest 24.5 decimal property in suit dag number 2873. Accordingly, the sale in respect of rest 24.5 decimal property in suit dag number 2873 is bad in law. It was on such consideration, the application claiming right, title, interest in respect of 24.5 decimal property is non-existent, was disallowed.

Accordingly, the appeal being FMA 101 of 2022 and the application being CAN 1 of 2022 stand dismissed.

However, there shall be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)