

Item-16. 22-07-2022

FMA 4101 of 2014
CAN 1 of 2014 (old CAN 8321 of 2014)

sg Ct. 8

Tepru Paul
Versus
Subal Paul & Ors.

The appellant is not represented nor any accommodation is prayed for on behalf of the appellant. The appellant was also not represented on earlier occasion. However, in terms of our earlier order, we propose to dispose of the appeal and the application on the basis of the materials available on record.

The appeal is arising out of a judgement and decree dated 20th March, 2013 passed by the learned Civil Judge (Senior Division), Dinhata in a suit for partition and separate possession.

The appellant in his written statement had stated that he sold out some portion of the suit land for the purpose of meeting expenses for his younger brothers. Subsequently, during trial of the suit after adducing of evidences at length, the appellant had taken a plea that the defendant no.4 namely, Saradini Paul is not legally married wife of Harimohan Paul and her issues, plaintiff nos. 1, 2 and 3 are not legitimate sons and daughters of Harimohan Paul.

The learned Trial Judge relying upon the voter identity card, certified copy of the khatian no. 783 of Mouza Kawrai and certified copy of judgement passed in Title Appeal No. 37 of 2007 arising out of judgment and decree dated 27th September, 2007 and 6th October, 2007 passed in TS no. 28 of 2005 arrived at a finding that the plea raised by the appellant is untrue and cannot

be accepted. The said documents were marked as exhibit-2 series, exhibit-3 and exhibit-4. All those documents established that the name of the father of the plaintiff no.1 has been recorded as Harimohan Paul. In the previous judgment in Title Suit No. 28 of 2005, the present appellant was a co-appellant in a partition suit where he asserted that the plaintiffs of the present suit are the legal heirs of Harimohan Paul and arrayed them as defendants in the Title Suit 28 of 2005. The evidence of the appellant was prevariegating. The appellant cannot approbate and reprobate; the decision in the earlier suit between the parties is relevant for the purpose of adjudication of the present dispute between the parties.

On such consideration, we do not find any reason to interfere with the judgement passed by the learned Trial Court. The decree is upheld. The appeal is disposed of.

The LCR may be sent down immediately to the court below if it has already come to this Court.

This order shall be communicated to the learned Civil Judge (Senior Division), Dinhata, Cooch Behar through the office of the learned Registrar Administration (L&OM).

The urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)