

09 **25.04.
2022**

Ct. No. 04

Ab

SAT 56 of 2016

Bhudeb Charan Payra

Vs.

Kishor Kumar Das and others.

Mr. Syamantak Banerjee,

Mr. Abhijit Pal.

... for the appellant.

The concurrent finding of facts is sought to be challenged in the second appeal on the premise that the deeds executed in favour of the appellant by the predecessor in title have not been considered in the perspective of the respective occupation therein.

At the very outset, it has been contended by the appellant that the properties appended in the schedule of the plaint are exclusively owned and possessed by the appellant and, therefore, the preliminary decree passed by the trial court and subsequently affirmed by the first appellate court is perverse and not legally sustainable.

The plaintiffs/respondents filed a suit for partition and separation of shares in respect of the properties shown in the schedule appended to the plaint treating the same to be joint properties of the parties and not the exclusive properties. The plaint case proceeds that one Gadadhar Das, since deceased, was the owner of the properties, who left behind him surviving four sons, namely, Rashbehari Das, Gourhari Das, Premchand Das and Chitta Ranjan Das, who inherited the same in equal shares. There has been a vivid reflection of the heirs of the respective sons of the said Gadadhar and several deeds executed during their lifetime divesting their shares either in its entirety or in part in favour of the other co-sharers as well as the strangers. Ultimately it

has been contended that since the properties are the joint properties and have not been partitioned as yet, the plaintiffs/respondents are required the separation of their shares to the exclusion of the other co-sharers therein.

The defendant no. 2 has filed the instant appeal and admitted that the aforesaid four sons of Gadadhar inherited the estate left by their father in equal shares. The written statement would further reveal that one of the sons divested his undivided share by executing a sale deed on 29th July 1964 in favour of his brother, who, in turn, sold, transferred and conveyed his original share, which he inherited from his father and the another son, namely, Premchand in favour of Rashbehari. According to the appellant, Rashbehari, in fact, held and possessed 3/4th undivided share in the property and the other 1/4th share was retained and held by Chitta Ranjan, the another son. Subsequently, Rashbehari sold certain shares in the property in favour of the present appellant and it is contended that after those deeds having executed in his favour, the property has been acquired to the exclusion of the others. Even the written statement of the appellant goes too far to contend that the divestation of the right by Rashbehari in favour of the plaintiffs is illegal, fraudulent, void, forged and made by false impersonification and, therefore, was not acted upon. The additional written statement was filed by the appellant, the defendant no. 2, that the defendant no. 1 saying that the suit for partition is bad for partial partition and, therefore, is liable to be dismissed.

The trial court found that Chitta Ranjan did not divest his original share, which he inherited from his father and whatever divestation has been made is in respect of the shares, which he subsequently acquired.

Ultimately the trial court found that the properties are joint and have not been partitioned therein and the shares of the respective parties were declared. The said decree was carried to the appellate court and the appellate court affirmed the same by dismissing the same.

The first contention, which is raised before us, relates to the absolute right in respect of the properties in question to the exclusion of the others, which does not appear to us tenable in view of the specific stand taken in the written statement. A further question is raised that the occupation of the parties to the exclusion of the others is one of the factors to be taken into account while passing a preliminary decree.

It is beyond cavil of doubt that mere occupation does not alter the share of the co-sharers in respect of the joint properties either acquired by inheritance or by different modes of transfer. The occupation of one of the co-sharers may not be in commensurate with the shares but at the time of passing the preliminary decree, the court restrict its consideration to the shares held by the parties in the joint properties and the notion of possession or the mode of possession is irrelevant consideration.

The appellant has miserably failed to prove that one of the sons, namely, Hrishikesh, did not acquire any property by virtue of the deed executed in the year 1964 and all consequential deeds executed thereupon and, therefore, we do not find that such concurrent finding of facts needs interference in exercise of power under Section 100 of the Code of Civil Procedure.

Both the courts on the basis of the deeds produced before the court and marked as exhibits declared the shares of the parties in commensurate therewith, which does not appear to us to be perverse or based on no

evidence.

We, thus, do not find any substantial question of law involved in the instant appeal. The appeal is, thus, dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)