

Item 9. 05-07-2022

SA 234 of 2011

sg Ct. 8

Bhakti Bala Debya
Versus
Sitalabala Debya

(Through Video Conference)

Mr. Sounak Bhattacharya, Adv.
Mr. Sounak Mandal, Adv.

...for the respondent

In spite of service of Administrative Notice upon the sole appellant vide Memo No. 204-S dated 20-02-2021, the appellant is not represented.

The second appeal appeared in the warning list on 22nd June, 2022 and continued to appear in the list until it was transferred to the daily cause list on 28th June, 2022.

The appellants are not represented.

This appeal is arising out of a judgment and decree dated 26th May, 2010 affirming of the judgment and decree dated 27th August, 2007 passed by the learned Civil Judge (Junior Division), 1st Court at Bankura in Title Suit No. 85 of 2003.

The plaintiff filed a suit for declaration and permanent injunction. The plaintiff contended that 'ka' schedule mentioned property was purchased by the plaintiff and the defendant jointly and both the parties amicably partitioned the 'ka' schedule mentioned property into 'kha' and 'ga' schedule mentioned property; the 'kha' schedule property has been in possession of the plaintiff and the 'ga' schedule property has been in possession of the defendant since after the amicable partition by making their

respective portion is specifically demarcated with separate holding nos. 36 and 36/1 of Lalbazar Mahalla under Bankura Municipality for last 30 years.

The plaintiff alleged that the defendant and her sons are disturbing the peaceful amicable possession of the 'gha' schedule mentioned property by claiming it as her own and she had put a collapsible gate under lock and key in the 'gha' schedule property.

The defendant contested the said proceeding. The specific case of the defendant is that the 'ka' schedule mentioned property originally belonged to Memchandra Lohar who transferred the same to Smt. Nanibala Devi who was the wife of Anil Kumar Chattopadhyay by executing a registered sale deed dated 25th April, 1961. Nanibala also transferred 'ka' schedule mentioned property to the plaintiff and the defendant by a registered sale deed dated 29th November, 1962. After the said sale the plaintiff and the defendant are possessing the suit property in Ejmal. The suit property has never been partitioned by metes and bounds. On the basis of the pleadings and the evidence on record, the trial court was of the view that the plaintiff has failed to prove by cogent evidence. The finding of the trial court was that the plaintiff and the defendant are the co-sharers of the 'ka' schedule mentioned property. The plaintiff has title over the 'kha' schedule mentioned property but the same is not exclusive. Hence the suit was dismissed. The finding is based on the exhibit A, which is the Municipal sanctioned plan and the deposition of the parties. The plaintiff in the cross-examination has substantiated that after purchase the 'kha' schedule mentioned property, she has applied for mutation before the Municipality for mutating her name. The

oral partition was not proved. The description of the 'ka' 'kha' proved. The description of the 'ka' 'kha' and 'gha' schedule properties are also vague. The first appellate court in concurring with the findings arrived at by the trial court also relied upon exhibit-A. The original 'ka' schedule property was admittedly not an ancestral property. Admittedly the property was jointly purchased by the plaintiff and the defendant. The plaintiff by claiming a family arrangement and the separate holding numbers, has prayed for declaration in respect of 'Kha' schedule property. However, it is clearly laid down U/sec. 2(24) of the West Bengal Municipal Act, 1993 that where two or more adjoining holdings from part and parcel at the site or premises of a dwelling house etc., such holding shall be deemed to be one holding. The said provision has also laid down that holdings separated by a street or other means of communication (alleged 'gha' schedule passage in this case) shall be deemed to be adjoining within the provision of the said provision. Exhibit-A clearly establishes that there is only one construction made in the 'ka' schedule property as per the sanctioned plan. No other independent construction has been proved by the plaintiff in this case.

On the basis of the aforesaid concurrent finding of facts, we are of the view no substantial question of law is involved on the basis of which, the appeal could be admitted.

The second appeal is not admitted and dismissed.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)