

14.12.2022
SL No.13
Court No.8
(gc)

SAT 1646 of 2004
CAN 1 of 2004 (Old No: CAN 4440 of 2004)

Sri Lakshmi Narayan Jana & Ors.
Vs.
Smt. Hemangini Das

This matter appeared in the Warning List of 29th November, 2022 with a clear indication that this matter shall be transferred to the Regular Bench on 5th December, 2022. Since then the matter is appearing in the list. The second appeal is of the year 2004. The appellants have due notice of the matter. The appellants are not represented.

The second appeal is lying defective since 11th April, 2011. We find from record that a Coordinate Bench on 13th July, 2011 directed the learned Advocate for the appellants to remove the defects within two weeks from that date, in default, put up the matter for final orders. Even on that date none had appeared on behalf of the appellants. We could have dismissed the appeal for non-compliance of the order dated 13th July, 2011, however, we consider the question of admission of the second appeal on the basis of the available record. We have carefully read the judgments and decrees of both the Courts below.

The second appeal is arising out of the appellate judgment and decree dated 11th March, 2004 affirming the judgment and decree dated 29th August, 1996 passed

by the Trial Court in a suit for declaration and partition. The Trial Court passed a preliminary decree in-part for partition in respect of 8 annas share in 'Ka' Schedule of the plaint excepting the properties mentioned in Schedule 'A' of the written statement. The First Appellate Court affirmed the said decree. Both the Courts on the basis of the evidence on record have arrived at a finding that the parties are governed by Dayabhaga School of law and not Mitakshara School of Law. Briefly stated, the suit properties according to the plaintiff originally belonged to one Kailash Jana who died leaving behind two sons, Haraprosad and Kuber Jana. Kuber died leaving his widow Geli Jana. As such, Geli Jana, the plaintiff inherited 8 annas share of Kuber. The defendant, on the other hand, had claimed that the parties are governed by Mitakshara School of Hindu law. Kuber died in 1340 B.S. On the death of Kuber under the Mitakshara School of Hindu Law his share was devolved upon his survivor male member who happens to be the brother of Kuber. In order to provide maintenance, the defendant No.1 executed the sale deed in respect of some properties in favour of the plaintiff and also a deed of gift dated 1st July, 1957 while the plaintiff executed a Nadabi deed (no claim) in respect of the suit property in favour of the defendant No.1 allegedly on the basis of a village settlement. The plaintiff had prayed for declaration that the impugned Nadabi deed is void and has been created by the defendant No.1 by practising fraud. The Trial Court and

the First Appellate Court had arrived at a finding that at the time of death of Kuber, Hindu Womens Right to Property Act, 1937 had come into existence and since Kuber died in 1340 B.S., the widow acquired a life-interest in the property left by Kuber to the extent of 8 annas share. Having regard to such settled position, there could not have been any occasion for the plaintiff to execute a Nadabi deed as after the death of the plaintiff the property covered by the life estate of the plaintiff would have come in the hands of Haraprosad or his survivors. Therefore, the needle of suspicion directly comes towards the dependence of Haraprosad. In the meantime, in 1956, the Hindu Succession Act came into force and the life-interest of Geli had right in which the full ownership of the property left by Kuber. Accordingly, the execution of the Nadabi deed after the Hindu Succession Act came into force is shrouded in mystery and the foul play of Haraprosad could not be ruled out.

Both the Courts have arrived at a finding that the Nadabi deed was executed only with a view to defraud the plaintiff of her legitimate share in the suit property. Geli lost her husband at the age of 19 years and she became helpless and her future was uncertain. The plaintiff does not seem to have enough idea or knowledge about the property matters. Accordingly, it is quite possible and might have happened that her dependence on her Bhasur (husband's elder brother) Haraprosad with regard to such property matters have led her to peril without she being

aware of the consequences of such documents. The conclusion based on the evidence with regard to the execution of the said Nadabi deed is a possible view that can be taken on the basis of the evidence on record.

We do not find any substantial question of law on which the second appeal can be admitted.

Accordingly, the second appeal stands dismissed at the admission stage.

In view of dismissal of the second appeal at the admission stage, the application also stands dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)