

DL. November
43. 14, 2022

S.A. 37 of 2022

Sudhansu Halder & anr.

Vs.

Lalit Mohan Halder & ors.

The matter was adjourned on the earlier occasion on the prayer of the learned advocate for the appellants. On previous occasion, the appellants were not represented. Today, when the matter was called, none appears on behalf of the appellants, nor any accommodation is prayed for. However, we propose to consider the question of admission of the present second appeal on the basis of the materials available on record.

The judgment and decree of affirmance dated January 9, 1998 passed by the learned Additional District Judge, Third Court at Alipore, South 24-Parganas, in Title Appeal No. 123 of 1993 arising out of judgment and decree dated March 5, 1993 passed by the learned Assistant District Judge, Tenth Court at Alipore, in Title Suit No. 119 of 1984, which is a suit for partition, declaration and permanent injunction, is the subject matter of challenge in this appeal.

The plaintiffs/appellants filed the present suit for partition and injunction. The suit properties originally belonged to one Kalicharan Halder, who died leaving behind him two sons, namely, Kanailal and Nandalal, upon whom the properties in suit devolved in equal shares after the death of Kalicharan. The

defendants no. 1 to 4 alleged to have purchased the share of Kanailal from his successor in interest, namely, Mrinalini. The plaintiffs/appellants and the defendants no. 5 to 8 are the successors in interest of Nandalal. It was alleged that Mrinalini filed a suit for partition being Title Suit No. 71 of 1951, which was, ultimately, compromised by the subsequent purchasers, being the defendants no. 1 to 4 and Mrinalini being the plaintiff in the said suit. The present plaintiffs/appellants claimed that they were minors when such suit was compromised and, as such, the compromise decree so obtained was illegal and not binding upon them.

During the trial the parties have adduced their evidence. It transpires that solenama decree was passed on May 27, 1952 on the basis of a petition of compromise filed on the same date. Exhibit E being the Photostat copy of the plaint in Title Suit No. 71 of 1951 would show that Narendranath was a defendant in the said suit. Exhibit 1 is the judgment passed in Title Suit No. 35 of 1954 wherein the learned Subordinate Judge at Alipore observed that the compromise petitioner dated May 27, 1952 was filed jointly by the plaintiffs and the defendants including the defendant no. 2, namely, Narendranath Halder, in Title Suit No. 71 of 1951. On the basis of the compromise petition, the suit being Title Suit No. 71 of 1951 was decreed. On the date of compromise, Narendranath was alive and, accordingly, it cannot be said that the preliminary decree was passed exercising fraud on Narendranath. Moreover, it transpires that the present plaintiffs contested Title Suit No. 71 of 1951 as major at the stage of final decree. While they were minors, they were represented by court guardian under the order of the court. The

learned trial judge found that the property devolved upon Kanailal on the death of the original owner, Kalicharan, is impartible as the same has been partitioned by virtue of the decree passed in Title Suit No. 71 of 1951. The property has also been partitioned by metes and bounds and the contesting defendants got possession thereof. Accordingly, the learned trial judge found that the plaintiffs have no right, title and interest in the property held by Kanailal. The plaintiffs failed to establish that the decree in Title Suit No. 71 of 1951 was obtained fraudulently. They contested the final decree proceeding of the said suit as major. They also contested Title Suit No 35 of 1954 through Mr. G. B. Das, learned lawyer. It is significant to mention that Manmathanath filed Title Suit No. 35 of 1954 for setting aside the compromise decree passed in Title Suit No. 71 of 1951. The judgment delivered in Title Suit No. 35 of 1954 was affirmed by this court in F.A.T. 260 of 1957.

It further transpires that the plaintiffs did not implead all the parties in the present suit, whose impleadment is necessary for complete and effective adjudication of the disputes involved in the suit. The left out parties have some shares in the property. The plaintiffs had the opportunity to cure the said defects, but they did not take any step.

Considering the evidence on record, the learned trial judge held that the plaintiffs have no right, title and interest in the properties held by Kanailal and the suit is bad for defect of parties.

The first appellate court concurred with the findings arrived at by the trial court. In view of the concurrent findings of fact arrived at by both the courts below with regard to absence of

any right, title and interest in the properties held by Kanailal by reason of the compromise decree passed in Title Suit No. 71 of 1951 and the judgment passed by this court in F.A.T. 260 of 1957 affirming the decree passed in the suit filed for setting aside the compromise decree, we do not find any reason to interfere with such concurrent findings of fact. As such, we do not find any substantial question of law involved in this appeal for which the same is required to be admitted.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

There will be no order as to costs.

(Soumen Sen, J.)

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(Uday Kumar, J.)