

Item-1 10-05-2022

SAT 161 of 2019
CAN 1 of 2019 (old CAN 6728 of 2019)

sg Ct. 8

Amar Mondal & Ors.
Versus
Sushanta Mondal & Ors.

Mr. Buddhadev Ghosal, Adv.
Mr. Souvik Nandy, Adv.
...for the appellants

Mr. Pankaj Halder, Adv.
Mr. Sanaan Panja, Adv.
Mr. Tapas Manna, Adv.
...for the respondents

By consent of the parties, the appeal and the application
are taken up together and disposed of by this common order.

The dispute is between the three sons of Ghanashyam Mondal. The learned Trial Court, on appreciation of fact and law and on consideration of the evidence on record, declared the share of the plaintiffs to the extent of 22.66 decimals of land in 'ka' schedule property and 16.66 decimals of land in the first part of 'kha' schedule property and the rest land is hereby declared in favour of the defendants as per their share.

The present appellants are the aggrieved sons of Ghanashyam Mondal, who claimed ownership and/or share in respect of property situated in Fulsara Mouza. It appears from the impugned order that the appellants had made a categorical assertion that they have acquired the property situated at Fulsara Mouza from Gourmohan Sarkar by way of "Bandobasta" and the said property should be excluded from the hotchpotch to claim exclusive ownership over the suit property. However, the learned Advocate appearing on behalf of the plaintiffs before the

Appellate Court by producing two documents being Exhibit-2 and 2A demonstrated that the name of Mahendranath Mondal in CS plot nos. 3210 and 3211 was recorded as raiyat and since the name of Mahendranath Mondal has been recorded in that CS record and the names of his other two sons namely, Satish Ch. Mondal and Nagendranath Mondal have been recorded in the three successive record of rights, the right of the plaintiffs in respect of the suit property is not excluded. It was also the contention of the learned Advocate for the respondents/plaintiffs that mere non-recording of the name of Ghanashyam Mondal in those record of rights being the son of Mahendranath Mondal does not disentitle the plaintiff to claim share over the suit property.

The learned First Appellate Court on consideration of the respective submissions arrived at a finding that there is a tacit admission by the appellant that Ghanashyam is the son of Mahendranath Mondal and in the record of Shimulipara Mouza it was also revealed that Satish is one of the sons of Mahendranath. However, in view of the objections raised by the appellants before the learned First Appellate Court asserting the fact of acquiring property by other two sons of Mahendranath Mondal i.e. Nagendranath and Satish and keeping in view that it is within the knowledge of the appellant how they acquired the said property by Bandobastha from Ghanashyam. The matter needs deeper consideration.

We feel that on the basis of the records available before the learned First Appellate Court, the issues on which the matter

was remanded to the learned Trial Court could have been decided by the learned First Appellate Court itself. On the basis of the oral and documentary evidence, there is no fresh evidence that are required to be taken by the learned Trial Court for deciding either of the issues on which the remand order was ultimately passed. Even the order of the learned First Appellate Court does not clearly specify the extent to which the appeal was partly allowed. It may be at the end of the day a pyrrhic victory of the decree-holder/plaintiff as it would be difficult even for the Court to draw up a decree on the basis of the order of the learned First Appellate Court.

In a recent judgment, the Hon'ble Supreme Court in *Nadakerappa Since Deceased by LRS. & Ors. Vs. Pillamma Since Deceased by LRS. & Ors. decided on 31st March, 2022 (Civil Appeal Nos.7657-7658 of 2017)* has clearly stated that an order of remand cannot be passed as a matter of course. An order of remand cannot also be passed for the mere purpose of remanding a proceeding to the lower court. An endeavour has to be made by the Appellate Court to dispose of the case on merits and more so, when both the sides have led oral and documentary evidence, the Appellate Court has to decide the appeal on merits instead of remanding the case to the lower court. The relevant observations are in Paragraph 25, which state:-

“25.The Division Bench, without assigning any cogent reasons, has set aside the order of the learned Single Judge and has remanded the matter to the Land Tribunal. It is settled law that the order of remand cannot be passed as a matter of course. An order of remand cannot also be

passed for the mere purpose of remanding a proceeding to the lower court or the Tribunal. An endeavour has to be made by the Appellate Court to dispose of the case on merits. Where both the sides have led oral and documentary evidence, the Appellate Court has to decide the appeal on merits instead of remanding the case to the lower court or the Tribunal. We are of the view that, in the instant case, the Division Bench has remanded the matter without any justification.”

On such consideration, we do not find any reason to interfere with the order of the learned First Appellate Court for remand the matter to the learned Trial Court for writing a fresh judgment. On such evidence as observed earlier, it was open for the learned First Appellate Court to form its own opinion and write a judgment.

On such consideration we allow the appeal. The order of remand is set aside.

The learned First Appellate Court is directed to re-hear the appeal and write a fresh judgment on the basis of the evidence and materials already on record.

We request the learned First Appellate Court to dispose of the appeal as early as possible, preferably within a period of six months from the date of communication of this order by either of parties without granting any adjournment to either of the parties unless it is unavoidable and subject to the convenience of the learned First Appellate Court.

The Appeal being SAT 161 of 2019 and the application

being CAN 1 of 2019 (CAN 6728 of 2019) are accordingly, disposed of.

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

(Sugato Majumdar, J.)

(Soumen Sen, J.)