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15-03-2022

Ct. 8

FAT 296 of 2019
CAN 1 of 2019 (old CAN 7690 of 2019)
CAN 2 of 2019 (old CAN 7691 of 2019)

Badal Chandra Basak & Ors.
Versus
Bhagwati Basak & Ors.

Mr. Avishek Prasad, Adv.
Ms. Sreetama Neogi, Adv.

...for the appellants

Mr. Avinaba Patra, Adv.
Mr. Dipayan Kundu, Adv.
Mr. Souraja De, Adv.

...for the respondents

In Re: CAN 1 of 2019 (old CAN 7690 of 2019)

This is an application for condonation of delay. There is a delay of 20 days in presenting the memorandum of appeal.

We have perused the application for condonation of delay and we are satisfied that there is sufficient cause for the delayed filing of the appeal.

Under such circumstances, we condone the delay of 20 days in presenting the memorandum of appeal.

CAN 1 of 2019 (old CAN 7690 of 2019) is allowed.

In Re: FAT 296 of 2019 and CAN 2 of 2019 (old CAN 7691 of 2019)

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

The appeal is arising out of a preliminary decree passed by the learned Civil Judge (Senior Division), 1st Court, Malda in a suit for partition. The plaintiff no.1 is the mother.

Mr. Avishek Prasad, learned Counsel appearing on behalf of the appellants submits that the learned Trial Judge passed a decree disregarding the amendments made in Sections 3 and 4 of the Prohibition of Benami Property Transactions Act, 1988. The learned Trial Judge has failed to appreciate that the property was purchased by the father in the name of the mother and accordingly, the said property should be treated as the property of the father. On the demise of the father, the parties shall inherit the property in equal measure.

It is true, that the learned Trial Judge has relied upon the unamended Sections 3 and 4 of the Prohibition of Benami Property Transactions Act, 1988 in arriving at a finding that the plaintiff no.1 is the co-owner of 8 anas share of the 'kha' schedule property. However, by reason of amendment, to which our attention is drawn by Mr. Prasad, the mother becomes the absolute owner of the 'kha' schedule property which was purchased in her name by her husband. Mr. Prasad submits that the property was purchased in the joint names of the plaintiff no.1 and her husband. Although, the learned Trial Judge has referred to the unamended provision but the new amended provision conclusively vested the right in favour of her towards her 8 anas claim in 'kha' schedule property.

In view thereof, the order of the learned Trial Judge is upheld, however, for the reason recorded in this order. The appeal fails. However, there shall be no order as to costs.

Service of notice of appeal upon the respondents is waived by Mr. Avinaba Patra, learned Advocate.

Urgent photostat certified copy of this order, if applied for,

be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)