

20.12.2022
SL No.43
Court No.8
(gc)

SAT 247 of 2009
CAN 1 of 2010 (Old No: CAN 2706 of 2010)

Sri Mihir Lal Ganguly
Vs.
Dilip Kumar Moitra & Ors.

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 appeal is of the year 2009. The appellant has due notice of the matter. The appellant is not represented.

The appeal is defective as notified by the Additional Stamp Reporter in its report dated 02/07/2009 and thereafter no attempt was made to remove the defects. We could have dismissed the appeal for non-removal of the defects.

The appellate judgment and decree dated 23rd May, 2008 affirming the judgment and decree of the Trial Court dated 23rd December, 2004 in Misc. Case No.42 of 1986 is a subject matter of challenge in this second appeal. We have carefully perused the orders. The proceeding is arising out of preemption. The petitioners based their claim on the basis of the deed of gift. The opposite parties, on the other hand, contended that the property was partitioned on 7th February, 1982 prior to purchase by the deceased opposite party No.1 at a price of Rs.10,000/-. The plot of land in question is plot No.232 under Khatian No.46. Maniklal as co-sharer of the said plot sold the suit property to opposite

party No.1 at a sum of Rs.10,000/- on 10th February, 1982. The petitioners instituted the title suit at Baruipur Court on the plea that the impugned schedule of land was not partitioned and was included in the common passage. The petitioners did not have the longest common boundary as the land measuring 91 ft. in length and 20 ft. in breadth was partitioned on 7th February, 1982 that is prior to purchase and in view thereof, the petitioners are neither the co-sharers of the land nor owner of contiguous land. These facts have not been established before the learned Trial Court as well as the First Appellate Court.

We do not find any reason to interfere with the concurrent findings of facts based on evidence. Both the Courts have taken into consideration the Exhibit-‘Ka’ wherefrom it is found that the said document is an agreement regarding the demarcation and the fact of such demarcation has been duly proved in T.S. No.119 of 1982. Both the Courts have arrived at a finding that evidence of P.W.1 would show that his grandfather gifted the suit plot to Anath Bandhu and Manicklal and during his cross-examination he has categorically stated that there was a registered partition between the parties in respect of plot No.232 and the opposite parties have purchased the entire land which belonged to his uncle. P.W.1 has further admitted that his father had no share in the said plot.

On such consideration, we do not find any reason to interfere with the concurrent findings of facts. The second appeal is not admitted both on the grounds for non-removal

of defects as well as on merits as we do not find any substantial question of law is involved in this appeal.

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

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

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)