

33 22.12.2022

Ct-08

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SAT 272 of 2011
with
I.A No. CAN 1 of 2011(Old CAN No. 8211 of 2011)

Subhas Maity & Ors.
Vs.
Ganesh Chandra Maity & Ors.

The appeal is of the year 2011. However, no attempt has been made to move this appeal.

The appeal appeared in the warning list on 29th November, 2022 with a clear indication that the same shall be transferred to the regular list on 5th December, 2022, since then the matter is appearing in the list.

It appears from the record that a coordinate bench on 30.9.2011 upon noticing the defects, as notified by the stamp reported on 11.8.2011, directed listing of the appeal after long vacation for the year 2011 before the appropriate bench after removing the defects.

The first appellate court has allowed the appeal in part upon noticing that the deed of gift was acted upon and the claim of the plaintiffs for a declaration could not be denied merely because of undemarcated land. The suit property was transferred in favour of Gouribala by the joint owners of the said plot. From the materials on record it appears that the plaintiffs and the defendant nos. 9 and 10 have acquired right, title and interest in respect of one acre of land by way of inheritance after the death of the mother, Gouribala. The suit plot was partitioned by metes and bounds by the co-sharers. On such consideration, there could not have been any bar to declare right, title and interest over the demarcated portion which they have got by way of inheritance from Gouribala after his demise.

The first appellate court has rightly refused to grant any order of injunction in absence of any partition, however, has rightly allowed the prayer for declaration of title.

The appeal was allowed by the first appellate court, in our view, does not suffer from perversity.

The trial court on the basis of the evidence ought to have decreed the suit in favour of the plaintiffs to the extent allowed by the appellate court.

Under such circumstances, the appeal accordingly fails.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage along with CAN 8211 of 2011.

There will be no order as to costs.

(Uday Kumar,J.)

(Soumen Sen, J.)

