

Item-34. 19-09-2022

sg Ct. 8

SA 39 of 2022

Sudhanshu Sekhar Dinda & Ors.
Versus
Jamini Dinda & Ors.

In view of our earlier order dated 15th September, 2022, we propose to consider the question of admission of the second appeal on the basis of the available materials in absence of the appellants.

The appeal is directed against the judgment and decree dated 12th June, 1998 affirming the judgment and decree of the trial court dated 23rd September, 1994.

The suit was for declaration and permanent injunction. We have carefully considered both the judgments.

The claim is in respect of Ka schedule property. The plaintiffs contended that one Trailokya Dinda took settlement of the suit property and was in possession thereof by paying rents to the landlord. According to the record of rights of 1937, the suit property was recorded in his name and after his death, his son Phanindra Nath Dinda inherited the suit property and was in possession thereof by paying rents. The present plaintiffs are the successors of Phanindra Nath having inherited the suit property and are in possession thereof by paying rents. The predecessors of the defendants, namely, Dinabandhu Dinda has no share nor the present defendants as his legal heirs. The plaintiffs alleged that on 15.05.1989 the defendants have threatened to dispossess the plaintiffs from the suit property. After enquiry the plaintiffs have come to know that in the ROR of 1960 B.S. the suit property was

erroneously recorded in the name of Phanindra Nath and Dinabandhu in equal share instead of the plaintiffs alone. It was on that basis, the plaintiffs failed for declaration in respect of the entire Ka schedule land and permanent injunction.

Defendant nos. 1 to 7 contested the suit by filing the written statement. In the written statement, it was contended that their predecessors were in joint possession. The predecessors in interest of the plaintiffs took settlement of the suit land from the joint family income and his name was solely recorded in the settlement of 1937 as karta of the joint family at the relevant time.

The trial court, on the basis of the oral and documentary evidence, arrived at a definite finding that Trailokya Dinda was the Karta of the join family and he performed his role as such in respect of sale and purchase of the joint family properties. It is further admitted by P.W.1 that the plaintiffs have no document to show that Trailokya Dinda had personal source of income in 1937/1340 B.S.

The claim for joint possession could not be demolished during evidence. It was on such finding, the suit was partly decreed in favour of the plaintiffs.

The learned trial judge declared that the plaintiffs have right, title, interest and possession only in respect of 1/2 share of the suit property.

This was challenged in the appeal. On appreciation of evidence, and on the basis of the deposition of PW-1 read with other evidence, the appeal court was of the view that the trial court was justified in allowing the suit in part in favour of the plaintiffs.

In view of such concurrent findings of fact, which on the

basis of the evidence was justified, we do not find any reason to admit this appeal. The appeal does not involve any substantial question of law.

The second appeal stands dismissed. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)