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Ct-08

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SA 113 of 2021
with
I.A No. CAN 1 of 2019(Old No. CAN 7997 of 2019)

Ram Prasad Patra
Vs.
Shrimati Sankari Roy

Mr. Rabindranath Mahata
Mr. Aritra Shankar Ray
... For the Appellant

Mr. Sukanta DAs
... For the Respondent

The second appeal is arising out of the appellate judgement and decree dated 16th April, 2019 passed by learned Additional District Judge in charge, 3rd Court at Paschim Midnapore in Title Appeal No. 4 of 2011 reversing the judgement and decree dated 26th May, 2011 passed by learned Civil Judge, Senior Division, 3rd Court at Paschim Midnapore, in Title Suit No. 7 of 2007.

We have heard Mr. Rabindranath Mahata, the learned counsel appearing for the appellant.

The dispute is in relation to the land and building appertaining to plot no. 173. The first appellate court agreed with the finding of the learned trial judge to the extent, which declared the right, title and interest of the plaintiff over the residential building in question on the suit plot no. 173. However, it was noticed that the land in question appertaining to schedule A and B being plot no. 173 is an undivided property, as it appears from Exhibit-1 and the contesting parties have the equal share in the said land. The first appellate court held that considering the nature of the case, no preliminary decree can be passed declaring the equal share of the

parties over the suit plot no. 173 appertaining to schedule B of the plaint in absence of any evidence as regards the location, projection and valuation of the entire land measuring 1.42 acres appertaining to plot no. 173.

The appellate court, in our view, has rightly considered the suit land abutting to the road will be of higher valuation than the suit land which is far away from the main road cannot have the equal valuation in comparison to the land situated adjacent to the main road. Accordingly, the co-sharers are in disadvantageous position by the reason of allotment of land, which is far away from the main road can be compensated by way of owelty money. Moreover, it transpires during evidence that the plaintiff selected the land nearer to the main road and made construction without any objection from the defendant. On such consideration, the first appellate court was of the view that the appellant would be entitled to 5 decimals of land from the share of the plaintiff, which needs to be worked out by the Advocate Commissioner at the time of effecting final decree. We only add that in the event the 5 (five) decimals of land is not immediately parted, as apprehended by Mr. Mahata, the market value of 5 decimals of land nearer to the main road would be the criteria, on the basis of which the owelty money needs to be determined, as it is evident that the suit land abutting to the main road would fetch a higher price than the plot of land, which is far away from the main road.

On such consideration, the second appeal is disposed of even at the admission stage.

In view of disposal of the appeal the application being CAN 7997 of 2019 is also disposed of.

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)