

14.02.2022
SL No.2
Court No.8
(gc)

SAT 419 of 2018
With
CAN 1 of 2018
(Old No: CAN 8014 of 2018)
with
CAN 4 of 2019
(Old No: CAN 9659 of 2019)

Sk. Golam Maula (Sultan) & Ors.
Vs.
Sk. Sariful Haque & Ors.

(Via Video Conference)

Mr. S.S. Arefin,
...for the Appellants.
Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray,
...for the Respondents.

Re: CAN 4 of 2019
(Old No: CAN 9659 of 2019)

This is an application for substitution of the legal heirs of deceased respondent No.1, Sk. Sariful Haque, who died on 1st July, 2019. The names of the legal heirs are mentioned in Paragraph 7 of the petition. They are all major and sui juris.

In view thereof, the prayer for substitution is allowed. The name of the respondent No.1 shall be struck out and substituted by legal heirs as prayed for in the petition.

Accordingly, the application being CAN 9659 of 2019 stands disposed of.

Re: SAT 419 of 2018
With
CAN 1 of 2018
(Old No: CAN 8014 of 2018)

The appellants have preferred the second appeal arising out of the judgment and decree dated 30th June,

2016 passed by the learned Additional District Judge, 6th Court, Paschim Medinipur reversing the judgment and decree dated 20th August, 2010 passed by the learned Civil Judge (Senior Division), 3rd Court, Paschim Medinipur in Title Suit No.99 of 2006.

The learned Counsel for the present appellants have submitted that the second appeal is required to be admitted as the First Appellate Court has completely misdirected its mind in allowing the plaintiff to purchase the shares of the defendant No.1 to 12, 18 and 20 to 24 in the suit property as a result whereof the appellants would be deprived of the common enjoyment of the tank, which was held to be impartible by the learned Trial Court and kept it in the joint possession for common enjoyment of the purpose.

The said submission appears to be contrary to the stand taken by the appellants before the First Appellate Court. Before the First Appellate Court, it appears that the learned Counsel for the respondent Nos.18, 22 and 23 submitted that they are the sons and brother of the appellant and they have no objection if the plaintiff could purchase the remaining share of the defendants. The learned Counsel for the defendant Nos.11,13,14,15,16,21,25 and 26 before the First Appellate Court submitted that they had already transferred their meagre share in the suit tank to the plaintiff for which they had got no objection if the plaintiff

is allowed to purchase the remaining meagre share of the defendants. The main contesting defendants in the first appeal were the respondent Nos.1 to 10. It is submitted on their behalf that it is true that they had meagre share in the suit tank but having regard to the fact that the plaintiff is the owner of 3/5th share in the suit property for which, if the prayer of the plaintiff under sections 2 and 3 of the Partition Act can be allowed subject to an open sale to be arranged and it should be confined among the co-owners and if the plaintiff pays the highest valuation, he can get the relief as per his prayer. It was on the basis of such submission, the learned First Appellate Court modified the preliminary decree passed by the learned Trial Court by declaring that the plaintiff-appellant has 3/5th share in the suit property and the suit is decreed in preliminary form. The plaintiff-appellant is permitted to purchase the shares of the respondent Nos.1 to 12, 18 and 20 to 24 in the suit property, having more than moiety share at a valuation assessed by the Partition Commissioner, which will be determined in a subsequent proceeding. The appellant is permitted to take steps accordingly.

Mr. S.S. Arefin, learned Counsel appearing on behalf of the appellants submits that some of the contesting defendants are also appellants herein and all are questioning the order of the First Appellate Court.

Once the parties have put their suggestion to the Court with regard to the distribution of shares and modalities for settlement of the impartible estate (tank), it is no more open for such parties to question the order based on such suggestion. Moreover, we do not find that the views taken by the First Appellate Court is contrary to law in relation to partition among the co-owners.

In a suit for partition, it shall be the endeavour of the Court to ensure that in the event the property is found to be impartible to the meagre share of a particular co-sharer if can be adjusted by way of owelty, the Court can explore it to put an end to all the controversy. In the given case, as would appear from the order of the First Appellate Court that most of the defendants have agreed to allow the application of the plaintiff filed under Section 2 and 3 of the Partition Act to purchase the tank to the highest bidder among the co-owners. In fact, most of the defendants have sold their shares and some of the defendants are willing to sell their remaining shares in favour of the plaintiff. It was on such consideration, the First Appellate Court passed the aforesaid order. The order was principally on the suggestion of the parties. The endeavour was to work out a solution on the basis of the suggestion given by the parties.

In view thereof, we do find any substantial questions of law for which the second appeal needs to be admitted.

The second appeal fails.

Accordingly, the second appeal being SAT 419 of 2018 and the application being CAN 1 of 2018 (Old No: CAN 8014 of 2018) stand dismissed.

However, there shall be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)