

DL. September
33. 5, 2022

S.A. 87 of 2022

Anil Kumar Naskar & ors.

Vs.

Sri Bibhuti Naskar & ors.

None appears on behalf of the appellants, nor any accommodation is prayed on their behalf. The appellants also remained unrepresented on July 11, 2022. The present appeal was presented in the year 2016 without any effort or desire to move the appeal for admission. However, in view of the earlier order dated July 11, 2022, we propose to decide the question of admission of the present second appeal on the basis of the materials on record.

The present appeal has arisen out of a judgment and decree of affirmance dated June 30, 2016 passed by the learned Civil Judge (Senior Division), Second Court at Howrah, in Title Appeal No. 83 of 2013 arising out of judgment and decree dated April 29, 2013 passed by the learned Civil Judge (Junior Division), First Court at Howrah, in Title Suit No. 64 of 2010.

The only issue raised in the present appeal is that the appellate court below did not consider the oral partition in between the parties and came to a wrong finding to the effect that as per Section 14(1)(b) of the West Bengal Land Reforms Act, 1955, partition was required to be effected by a registered deed of partition or by a decree of the court.

We have carefully considered the judgments of both the courts below. The plaintiffs are claiming their title in the suit

property by way of inheritance from their ancestors along with the plaintiff no. 1, who purchased the suit property from Bankim Behari Roy who in turn purchased the same from Mohanlal Naskar, who inherited the same from Bijoy Naskar, one of the legal heirs of Fakir Chand Naskar. In the plaint, it is alleged that Fakir Chand Naskar had four sons. There is nothing on record to show that the said four sons of Fakir Chand Naskar had effected partition of the “A” scheduled property. It is elementary that a partition was sequence of status between the parties. The plea of oral partition can succeed only when a party will be able to produce a document showing that the parties have arrived at an amicable settlement and on the basis of the same they are in possession of their respective shares. There is no evidence on record to show that any such arrangement was recorded in any of the documents. The document on the basis of which the partition is claimed must be registered, as the said document itself creates title and/or relinquishment in respect of a portion of the property. Otherwise all the persons are jointly holding every inch of the suit property.

In our view, the trial court in absence of such evidence rightly rejected the claim of the plaintiffs and the first appellate court has rightly concurred with the findings of the trial court.

In absence of any perversity in the judgments of both the courts below, we do not find any reason to interfere with the concurrent findings of fact arrived at by both the court below. Moreover, we find no substantial question of law involved in this appeal for which the same is required to be admitted.

The second appeal is, therefore, summarily dismissed

under Order XLI Rule 11 of the Code of Civil Procedure.

There will be no order as to costs.

(Soumen Sen, J.)

dns

(Uday Kumar, J.)