

05.09.2022
SL No.34
Court No.8
(gc)

SA 88 of 2022

**Sukumar Middya
Vs.
Basumoti Middya & Ors.**

The second appeal has come up for admission. The learned Advocate for the appellants is not represented. On the earlier occasion, the appellant was also not represented.

We propose to consider the appeal for admission on the basis of the available record and the question of law framed for admission. The second appeal is arising out of a decree of affirmation passed in the suit for declaration and injunction and partition. The suit was decreed by the Trial Court by declaring the shares of the parties. The First Appellate Court affirmed the said decree. The principal dispute is with regard to the construction of the house of the plaintiffs on the suit plot. The plaintiffs alleged that the house situated on the said plot that is 33 decimals of land has been constructed by the plaintiffs/respondents and the defendant No.1/appellant jointly out of the joint fund whereas the same has been disputed by the defendant No.1/appellant. It was contended that the said house was purchased by the defendant No.1 out of his own fund. The appellant could not establish that the said house constructed out of his own fund. The said finding is based on Exhibit-5 and Exhibit-C. It appears from the said Exhibits that Sukumar Middya had purchased 33 decimals of land from Bibhuti Bhusan Mondal by a separate

registered deed of sale dated 23rd March, 1999. In the said deed, the purchased property of the defendant No.1/appellant has also been mentioned by describing the boundaries and on the east of his purchased land, there is the purchased property of Sushil Middya. It further appears during evidence that the predecessor-in-interest of the plaintiffs and the defendant No.1 have purchased specific portion of the suit plot from Bibhuti Bhusan being the sole owner of the suit plot at the time of transfer and the jointness of the suit plot to the predecessor-in-interest of the plaintiffs and the defendant No.1. The learned Trial Judge relying upon the decision of the Hon'ble High Court in **Smt. Labanya Bala Debi Vs. Smt. Parul Bala Debi** reported at **77 C.W.N 27** and **Sk. Samser Ali Vs. Serina Bibi** reported at **2012 (2) ICC 39** has arrived at the conclusion that when an original owner has sold the well demarcated portion, it does not attract Section 14 of the West Bengal Land Reforms Act and the said purchaser does not become the co-sharer along with the original owner. It was on such observation as well as the Exhibit-5 and Exhibit-C, the Trial Court decreed the suit in favour of the parties. The only challenge in the appeal was that Sukumar Middya being the defendant No.1 should have been allotted more share in the suit property. It is argued on his behalf that the balance 44 decimals of land are joint possessed by the plaintiffs and the defendants. The plaintiffs have no house in the suit land whereas 33 decimals.

In view of the finding arrived at by the Trial Court was that the said house was constructed out of the joint fund,

this finding does not appear to be perverse as it is based on the exhibits and other evidence on record. The concurrent findings of facts with regard to the jointness of the property with regard to which the house is constructed cannot be discussed in the second appeal unless it appears to be perverse.

In view of the aforesaid, we do not find any substantial question of law involved in the second appeal and dismissed at the admission stage.

Accordingly, the appeal being SA 88 of 2022 stands dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)