

19.09.2022
SL No.29
Court No.8
(gc)

SA 8 of 2022

**Chaitanya Saha & Ors.
Vs.
Manukiya Chaudhury & Ors.**

None appears on behalf of the appellants, nor any accommodation is prayed for on their behalf. On previous occasion, the appellants were not represented.

In view of our order dated 15th September, 2022, we propose to decide the question of admission of this second appeal on the basis of the available materials on record. The appellate decree reversing the decree of the learned Trial Judge is the subject matter of the appeal. Baidyanath Chowdhury, since deceased, filed a suit for partition being Partition Suit No.01 of 2003. The said suit was decreed on contest in part. Being aggrieved by the said decree, Baidyanath Chowdhury preferred an appeal and during the pendency of the appeal he died and was represented by his legal heirs who are the respondents in this appeal. In the plaint, it is stated that the schedule property (total 29 decimals) lying at Kardaha mouza was originally owned by Banbihari Singh and Raj Kumar Singh in equal shares and C.S was recorded in their names. Banbihari Singh died, leaving behind widow Jasoda and two daughters Renubala and Manibala and they jointly owned and possessed such lands (14 ½ decimals). On demise of Raj Kumar his only son Dhiren

Singh inherited his properties (remaining 14 ½ decimals). On 19.05.1971 said Dhiren by Deed No.6412 sold such 14 ½ decimals to Jagadish Chandra Singh and Dharendra Chandra Singh @ Dhiresh and delivered possession. Said Jagadish Chandra Singh is the husband of Renubala (Defendant No.1) and Dharendra Chandra Singh @ Dhiresh is the husband of Manibala (Defendant No.5). Jagadish Chandra Singh died by leaving behind Renubala, Dulal Chandra Singh and Dukhini Singh (that is defendant No.1 to 3). Dharendra Chandra Singh @ Dhiresh died leaving behind his wife Manibala, three sons Ratan, Ashim and Jaydeb Singh and two daughters Rita and Sima Rani Singh (defendant Nos.5 to 10).

On 07.04.1999 by deed No.1582 the defendant No.1 & 2 (Renubala and Dulal) sold out 4 decimals of property to the plaintiff. The defendant No.1 Renubala on 30.06.1999 by deed No.2582, again sold 1 decimal of her share to the plaintiff and on 07.05.1999 by deed No.1963, the defendant no.5 to 10 sold 4 decimals of land to the plaintiff. Before execution of such sale deed of 4 decimals by the defendant no.5 to 10, one agreement for sale was executed on 01.04.1998 wherein the defendant No.2 (Dulal) signed as witness. On such purchases the plaintiff became owner of 9 decimals of land and also a co-owner in respect of the schedule property. It was on such facts, the partition suit was filed.

The defendant Nos.1, 2 and 3 in their written statement admitted the original ownership of Banbihari

and Rajkumar and inheritance of such property by their legal heirs, that is, defendant Nos.1 to 5. They however, stated that on demise of Rajkumar Singh, his properties were inherited by his daughter Tukon Bala Singh and son Dhirendra Chandra Singh. Dhirendra Chandra Singh illegally sold the entire 14 ½ decimals of land on 19.05.1971 to Jagadish Chandra and Dhirendra Chandra Singh @ Dhiresh and delivered possession. To maintain good relationship the defendant No.1, 2 and 3 subsequent to the death of Jagadish and Dhirendra, left 7 decimals of land in favour of Tukon Bala and Tukon Bala on receiving such property sold out the same to Chaitanya Saha, Nabadwip Pramanick and Sukhen saha by registered deed. Mani Bala (defendant No.5) sold out 10 decimals of property (inherited by her in respect of 7 decimals from her husband and 3 decimals purchased from Dhirendra Chandra Singh) to the defendant No.2 and her brother Shyamal Chandra Singh on 03.03.1980 by registered deed no.2988 and delivered possession and on demise of said Syamal Chandra Singh his property was inherited by his mother, brother and sister since he was not having any children. On sale of such property, she was left with no property. The defendant no.1 and 2 sold out 4 decimals to the plaintiff. The said defendant Nos.5 to 10, by taking advantage of wrong recording, sold 4 decimals to the plaintiff, which the plaintiff could not have, since such property was not of his vendors at all. The defendant No.2, being an innocent rustic person signed as witness,

the agreement for sale in between the defendant Nos.5 to 10 and the plaintiff, without understanding the purport and subsequently, through intervention of the well-wishers on 25.6.1999 at Tapan PS, he on 28.06.1999, sold 1 decimal of his land to the plaintiff as compensation and therefore the plaintiff is having 5 decimals of his land in total and not 9 decimals. They also stated about initiation of few quasi criminal proceedings by the plaintiff against them.

The defendant Nos.11 to 13 filed written statement to state that they have been unnecessarily impleaded and it is within their knowledge that the defendant No.1 and 2 sold total 5 decimals (4+1) to the plaintiff and the defendant Nos.5 to 10 sold total 4 decimals to the plaintiff and therefore the plaintiff is having right of 9 decimals in the suit property.

The defendant Nos.15 to 18 and 20 and 21 filed another written statement and reiterated the statements made in the written statement filed by the defendant Nos.1 to 3.

On the basis of the aforesaid pleadings, the learned Trial Judge framed nine issues. On the basis of the oral and documentary evidence, the learned Trial Judge decreed the suit in part thereby declaring 5 decimals of land in favour of Baidyanath instead of 9 decimals and directed the parties to effect partition. Baidyanath being dissatisfied referred the first appeal being O.C. Appeal No.41 of 2010. The first Appellate Court found certain

issues that ought to have been decided by the learned Trial Court but instead of remanding the matter, proposed to decide the issue on the basis of the available materials on record. Consideration for remanding the suit for trial was that the learned Trial Judge did not appreciate the case of the defendant Nos.1 to 3 properly, if holistically considered, it would show that their defence is halfhearted as they admitted many facts and stated few facts that are not relevant for consideration. The initial consideration for sending the matter for remand, are that Dhirendra Singh and his brother sold Tukon Bala's share too i.e. entire 14 ½ decimals of land on 19.05.1971 to Jagadish Chandra and Dhirendra Chandra and delivered possession of the said decimals of land to them. The learned Trial Judge seems to have completely lost sight of the fact that in the written statement, it has been stated that the said defendant Nos.1 to 3 maintained good relationship with Tukon Bala Singh and Tukon Bala on getting such property sold out the same to Chaitanya Saha, Nabadwip Pramanick and Sukhen Saha by registered deed. The First Appellate Court was of the view that the Trial Court proceeded on the basis of the admission by the learned Advocate for the appellant which according to the learned Trial Court even if taken at its face value cannot belie the documents that are already on record. It further transpires from the evidence of the PWs that they denied existence of Tukon Bala. Thereafter, the Appellate Court has considered the evidence on record in

order to find out whether the learned Trial Judge was justified in partly decreeing the suit to the extent of 5 decimals instead of 9 decimals.

The defence of the defendant Nos.1 to 3 was that on demise of Rajkumar Singh, his properties were inherited by his daughter Tukon Bala Singh and son Dhirendra Chandra Singh. Dhirendra Chandra Singh illegally sold the entire 14 $\frac{1}{2}$ decimals of land on 19.05.1971 to Jagadish Chandra and Dhirendra Chandra and delivered possession. If this portion of statement is assumed to be true and correct, even then the fact remains that the said deed dated 19.5.1971 has remained unchallenged. Tukon Bala never challenged the said deed. The said deed was in existence for over 30 years and acted upon. Insofar as the claim of evidence that had relinquished their claim in respect of 7 decimals (actually the same should have been 7 $\frac{1}{4}$ decimals) in favour of Tukon Bala, that relinquishment cannot affect the right, title and interest of the defendant Nos.5 to 10 in respect of 14 $\frac{1}{2}$ decimals share and they remained owner of such land by inheritance from their predecessor-in-interest, having no nexus with the defendant Nos.1 to 3. Out of such 14 $\frac{1}{2}$ decimals of their share, the defendant Nos.5 to 10 sold 10 decimals to the defendant No.2 and his brother Shyamal Chandra Singh on 03.03.1980 by registered deed no.2988 and on demise of that brother, the defendant Nos.1 to 3 have claimed to be inherited his share. Therefore, the Appellate Court was of the opinion that the defendant

Nos.5 to 10 were left with 14 ½ decimals of land which they were entitled to sale and since by registered deed dated 07.5.1999 (Exhibit-3) they have sold 4 decimals to the plaintiff, the plaintiff has become owner in respect of 4 decimals of land.

So far as the claim of the plaintiff in respect of 5 decimals (4 decimals purchased from defendant No.2 on 07.4.1999 (Exhibit-1) and 1 decimal purchased from the Defendant No.1 on 30.6.1999 (Exhibit-2), the same are admitted. In view of the aforesaid, plaintiff is also entitled to another 4 decimals of land purchased from defendant Nos.5 to 10 by Exhibit 3 on 07.5.1999 and therefore the plaintiff is owner in respect of total 9 decimals and the suit is to be decreed in respect of total 9 decimals.

Moreover, it transpires that before execution and registration of deed dated 07.5.1999 (Exhibit 3) the defendant No.2 himself signed the agreement for sale dated 01.04.1998 (Exhibit-4) as witness and the contention of the defendant No.2 that to compensate such mistakenly put signature, he executed another deed dated 30.6.1999 (Exhibit-2) is not substantiated since in such deed there is no such averment at all and such Exhibit-2 has been executed by her mother (defendant No.1) and not he himself. Therefore, in the opinion of the Court such Exhibit-2 is an independent document having no connection with the Exhibit-4.

The aforesaid findings of the First Appellate Court does not appear to be perverse. They are based on re-appreciation of oral and documentary evidence.

On such consideration, we do not find any reason to admit the second appeal. There is no substantial question of law involved in the second appeal.

Accordingly, the second appeal being SA 8 of 2022 stands dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)