

Dl. April 5,
29. 2022

F.A.T. 663 of 2017

Sri Jayanta Sen
Vs,
Smt. Arpita Tapadar

Mr. Soumyadeep Biswas,
...for the appellant.

Mr. Arijit Sarkar,
Mr. Prajaaini Das,
...for the respondent.

Re: CAN 11789 of 2017 (stay)
filed on December 13, 2017.

Although the matter is appearing under the heading “application”, by consent of the parties the appeal itself is taken up for consideration upon dispensation of all formalities.

In a suit for partition, declaration and injunction, the trial court, on the basis of the evidence on record, decreed the suit in preliminary form by declaring that the plaintiff/respondent has half share in the suit property. The trial court also restrained the defendant/appellant by an order of injunction from damaging and/or wasting the suit property and not to dispossess the plaintiff/respondent from the suit property till the final disposal of the suit.

The defendant has carried this appeal to this court. According to the defendant, the plaintiff had agreed to transfer her share in the suit property on receiving certain sum and jewellery. The court disbelieved the said contention of the defendant and the court did not find any foundational fact or evidence in favour of such contention of the defendant. The contention of the defendant

that prior to the marriage of the plaintiff, the mother of the parties being their guardian paid a sum of Rs. 50,000/- to the plaintiff by depositing the said amount in Alchemist, a scheme and presently the said amount has become a substantial amount and that he gifted some golden ornaments to the plaintiff at her marriage and that the said money and the ornaments were alleged to have been given to the plaintiff in lieu of her one-third share in the suit property with a view that the plaintiff would not claim her share in the suit property would not be proved at the trial.

The learned trial judge, on overall consideration of material facts and evidence on record has arrived at a definite conclusion that the alleged fact of relinquishment of the plaintiff's share in the suit property was not established by the defendant by adducing cogent evidence. The learned trial judge was correct in observing that the new facts in the written statement, by way of amendment, has to be proved by the defendant at the trial, since the onus to prove the same lies on the defendant. The defendant failed to produce any document to prove the alleged family settlement and, accordingly, the said evidence of relinquishment was discarded by the learned trial judge as hearsay evidence. The defendant, during his cross examination, admitted that he failed to produce any document to show that the said amount of Rs. 50,000/- was given to the plaintiff in lieu of her relinquishment of share in the suit property. It is an admitted position that on the death of their mother, the plaintiff and the defendant become the joint owners of the suit property. The other claim of the defendant that he had incurred some expenses for the purpose of maintenance and renovation of

the suit property and, as such, he would be entitled to a share in the suit property also could not be established as the defendant had failed to produce any document in support of such incurring of expenses. Moreover, it has been rightly observed by the learned trial judge by referring to a decision reported in the case of **Nallaya Goundar vs. Ramaswami Goundar & anr.** reported in **A.I.R. 1957 Mad 86** that the money spent for renovating or expanding the family house by any member of the family could not claimed back by him at the time of partition, when there is no evidence whatsoever to show that at that time the repairs or renovations were effected with the expectation of getting compensation from the family fund.

On such consideration, we do not find any reason to interfere with the preliminary decree passed by the learned trial judge.

Accordingly, the appeal fails and the same is dismissed.

In view of dismissal of the appeal, nothing remains in the application for stay and the same is also dismissed.

There will be no order as to costs.

dns

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)