

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.396 of 2001

Pramod Kumar Biswal

....

Appellant

Mr. Prafulla Kumar Panda, Advocate

-versus-

Radha Biswal & Others

....

Respondents

Mr. Partha Mukherji, Advocate (R.1 to 4)

CORAM:

MR. JUSTICE D.DASH

ORDER

26.08.2022

Order No.

09. 1. This matter is taken up through hybrid arrangement (virtual/physical mode).
2. None appears for the Appellant in this Appeal of the year 2001 when called. Learned counsel for the Respondent Nos.1 to 4 is present.
3. Perusal of the record reveals that this Appeal has already been dismissed by order dated 03.07.2018 as against the Respondent No.7 as the Appellant failed to comply the peremptory order passed by this Court in that regard. Keeping the above in mind, proceeding to consider as to whether in view of the dismissal of the Appeal as against the Respondent No.7, it can continue in respect of rest of the Respondents; this Court has perused the judgments passed by the Courts below.

It reveals that the present Appellant as the Plaintiff has filed the suit for partition and declaration that some sale deeds

and Will are sham and obtained illegally by exercising fraud, with further prayer of confirmation of possession of the Plaintiff over the suit schedule properties belonging to his parents with alternative prayer for eviction of the Defendants. The Respondent No.7 with other Respondents as the Defendants were contesting the suit as also the First Appeal, which had been filed by this Appellant as the unsuccessful Plaintiff. This Respondent No.7's stand is that he is a bona fide purchaser of a portion of the suit property from the Defendant No.3 and is in possession of the same. The Courts below as it appears have found that there was an old partition long before the birth of the present Appellant (Plaintiff) and few years prior to the birth of his natural parents. Both the Courts below having further gone through the evidence have found no change in the situation for all these periods and thus have answered the issue no.5 that there was a complete partition between Madan and Chaitanya in or about the year 1932 and that since then they were residing separately dealing with their properties separately. This being answered against the Appellant (Plaintiff), it has been next held that the Plaintiff, who is the adopted son of Chaitanya in the year 1973 cannot divest Chaitanya from the properties he got towards his share in the old partition. Upon answering other issues, it has been finally said that the Plaintiff's (Appellant) suit is not maintainable and he has no cause of action to sue and as such not entitled to the reliefs claimed. The decrees passed by the Courts below in dismissing the suit thus having attained finality in respect of the Respondent No.7 (Defendant No.7) as the nature of the decrees

is indivisible, this Appeal cannot proceed further in respect of rest of the Respondents (Defendants).

4. In view of all these, the Appeal stands dismissed in entirety. No order as to cost.

(D. Dash)
Judge



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