

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.288 Of 2017
(Through video conferencing mode)

Premalata Sahoo and others ... ***Appellants***

Mr. B.Bhuyan, Advocate

-versus-

Ranjita Jena ... ***Respondents***

Mr. B. Baug, Advocate
for O.Ps.1 and 2

CORAM: JUSTICE ARINDAM SINHA

ORDER
24.01.2022

Order No.

- 03.** **1.** Mr. Bhuyan, learned advocate appears on behalf of appellant. He submits, his clients were plaintiffs at trial and suffered concurring judgments of dismissal of their suit. His clients are claiming under defendant no.3 in respect of 8 annas share in 'B' schedule property. Said 'B' schedule property was sold away by defendant no.3 to defendant nos.1 and 2. There was fraud practiced on defendant no.3 by the other defendants in causing the sale. As such, the property not having been partitioned and his clients having coparcenary interest, they had claimed cancellation of the sale deed. Alternatively, right to repurchase. The appeal should be admitted on appropriate question of

law formulated in context of pleading by defendant no.3 in the written statement, jointly filed by him and defendant no.5.

2. Mr. Bhuyan relies on recent judgment of the Supreme Court in **Vineeta Sharma vs. Rakesh Sharma**, reported in (2020) 9 SCC 1, paragraphs 137 (137.1 to 137.4). He submits, the position in law on earlier interpretation by said Court stood overruled thereby.

3. Mr. Baug, learned advocate appears on behalf of defendant nos.1 and 2 and submits, there is no substantial question of law involved in the appeal. Defendant no.3 was not called to the box to prove any contention he may have made in the written statement jointly filed by him and defendant no.5. Pleading alone cannot be relied upon without proof in evidence. As such, defendant no.3 being owner of 8 annas share in 'B' schedule property, sold away same to his clients. Since it is joint property, the other co-sharers having 8 annas share confirmed the sale. The sale was made by the joint family, of a part of joint family property. He supports the trial Court judgment where it has been discussed that no question of presumption under section 4 of Partition Act, 1893 can arise because his clients had not filed for partition.

4. Two sentences from paragraph 5 in the trial Court judgment, talking about the separate written statement filed by defendant nos.3 and 5, are extracted and reproduced below:-

“..... These defendants have only signed on the sale deeds dated 16.05.1997 as a mark of their consent and they have never sold their interest in the said sale deeds.

xxx

..... In fact, defendants No.1 and 2 are not in possession over a portion of 'B' Schedule property and the same is continued under the possession of the family of these defendants.

Issues framed at trial were as follows:-

- “1. Is the suit maintainable in the eye of law?*
- 2. Is there any cause of action to bring the present suit?*
- 3. Whether the 'B' schedule property in question are the joint family coparcenary property of plaintiffs and defendants No.3 to 6?*
- 4. Whether the sale deeds bearing No.2540 and 2541 dated 16.05.1997 executed by defendant No.3 to 6 are valid?*
- 5. Whether the plaintiffs have got any right, title, interest over the suit land?*
- 6. Whether the plaintiffs have got right to re-purchase the schedule 'B' Property U/s. 22 of Hindu Succession Act?*

7. *Whether the plaintiffs are entitled to get permanent injunction?*

8. *To what other relief, the plaintiffs are entitled?"*

It is to be noticed that there was issue no.4 framed in regard to sale deeds executed by defendant nos.3 to 6.

5. On behalf of plaintiffs there were two witnesses. P.W.1 is plaintiff no.3 and P.W.2 is a neighbour. Therefore, the pleading of, inter alia, defendant no.3 that other defendants had sold away their 8 annas share and he only signed as a mark of consent to the sale, was not asserted from the box. So also was not asserted contention regarding possession by defendant nos.1 and 2. There is no evidence to show that the outsider purchasers had filed for partition, for the Court to consider allowing claim of pre-emption.

6. In **Vineeta Sharma** (supra) right to succession of daughters under section 6 in the Act of 1956 was considered in the reference and answered. In paragraph 139 of the judgment following was said:-

*“ 139. In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in **Prakash v. Phulavati** and **Mangammal v. T.B. Raju**. The opinion expressed in **Danamma v. Amar** is partly overruled to the extent it is contrary to this decision. Let the matters be placed before appropriate Bench for decision on merits.”*

None of the judgments mentioned as overruled in paragraph 139, were relied upon in the Courts below. Moreso, because the point being considered was right of succession under section 8 of the 1956 Act.

7. The Appellate Court confirmed judgment of the trial Court. This Court does not find any substantial question of law arising for admission of the appeal against the concurring judgments.

8. Accordingly, the appeal is dismissed.

(Arindam Sinha)
Judge

Prasant

