

05.04.2023
SL No.12
Court No.8
(gc)

FA 5 of 2009

Masammat Champa Bibi & Anr.

Vs.

Akbar Ali @ Haru Khan & Anr.

Mr. Sandip Ghosh,
Mr. Partha Sarkar,
...for the Appellants.
Mr. Gopal Chandra Ghosh,
...for the Respondents.

The appeal is arising out of the judgment and decree dated 11th July, 2007 in a suit for partition. The short question that has fallen for consideration is the relationship of Sadru Khan and Jagu Khan.

The learned Counsel for the parties have referred extensively to the evidence of the plaintiff and the defendants. In the plaint, the plaintiff did not say anything about Momin Khan. However, in his evidence, the plaintiff at some place said that he is claiming share in the suit property inheriting the same from his paternal uncle Hasmat Ali Khan and at other place he said that he never claimed the suit property by inheritance from his paternal uncle. In his chief, he has stated that Jagu is his father and Momin is his grandfather. However, Jagu and Hasmat were not full brothers. He has also said that Hasmat was the only son of his father. P.W.-2 in his deposition stated that Jagu is the paternal uncle of Joigunnesa Bibi. During his cross-examination he has stated that Akbar Ali is

the husband of his sister. However, no question was put to him in cross-examination with regard to the relationship between Sadru and Jagu. Joigunnesa Bibi deposed on behalf of the defendants. She, however, in her cross stated that Sadru was the father of Hasmat, Jagu was the father of Akbar, Momin was the father of Jagu and the father's name of Sadru is Momin Khan. Nawser Ali Khan, a neighbor deposed as D.W.-2. In his chief, he has stated that Jagu is not the paternal uncle of Joigunnesa Bibi. However, in his cross-examination he has stated that he is not aware of the name of the father of Sadru Khan. It was on the basis of such evidence, the Trial Court decreed the suit in part accepting that Jagu Khan is the paternal uncle of the respondents/appellants. The evidence with regard to the relationship between Jagu Khan and Hasmat Ali Khan is the only issue required to be decided as the share in the properties would depend upon such relationship. In the event it is contended and held that Jagu Khan is the paternal uncle of the appellants then the judgment under appeal is unassailable. In the background of such evidence, the Court is required to decide on proper appreciation of the evidence adduced on behalf of the parties. Admission is the best piece of evidence.

The learned Counsel for the appellants is unable to explain the admission made by one of the appellants in

his cross-examination with regard to the relationship between Jagu Khan and Hasmat Ali Khan. It is true that the plaintiff in his cross-examination has stated that Jagu and Hasmat were not full brothers but the defendants have admitted in the cross-examination that they are full brothers. The Trial Court accepted the evidence of the defendants keeping in mind that it is a suit for partition.

Under such circumstances, we do not find any reason to interfere with the order passed by the Trial Court.

The appeal fails.

Accordingly, the appeal being FA 5 of 2009 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.)