

04-08-2023
ct no. 13
sl. no. 4
sp

F.A. No. 68 of 2008

Islamuddin & Ors.

-Versus-

Nur Mohd. & Ors.

Mr. Sourav Sen,
Ms. Kasturi Tarafdar

...for the appellants

Mr. Partha Sarathi Bhattacharyya,
Mr. Raju Bhattacharyya

....for the respondent nos. 5 to 11

1. The appeal is directed against the judgement and decree dated April 29, 2005 passed by the learned Civil Judge (Sr. Division), Islampur, Uttar Dinajpur in Title Suit No. 13 of 2000. The said suit was dismissed by Court below as necessary parties have not been impleaded. Admittedly, the suit property is situated in R.S. Khatian Nos. 258, 254, 196 and 200 of Mouza Mahua J.L. No. 36, P.S.- Goalpokur, District- Uttar Dinajpur.
2. In addition thereto, the suit property comprised of R.S. Khatian Nos. 1176, 1184, 1164 and 2854. The property originally stood in the name of Sk. Tinwa, Sk. Ghenua and Sk. Saudagar. Some of the properties were gifted away by one of the legal heirs of Sk. Ghenua, namely, Sk. Samiruddin by gift deed Nos. 10653 and 10652

in favour of the plaintiff no. 1 and plaintiff nos. 8, 9, 10 and 11.

3. The extent of the gifts are indicated in the aforesaid two gift deeds. The Court below found that Khatian Nos. 1176, 1184 and 1064 have not been included in the joint properties. The Court below also found that one of the legal heirs of Sk. Saudagar, namely, a daughter called 'Kurani' and/or her legal heirs have not been impleaded.
4. In view of the above, this Court directs the plaintiffs to file an application for addition of parties and also for amendment of plaint to include all suit properties in which all the parties post amendment and addition shall have interest.
5. An additional written statement may be filed to the amended plaint. If the parties agree, the Court below may proceed to decide on passing a preliminary decree as regards the respective shares in the amended suit property based on the evidence already recorded. If the Court wishes to receive further evidence, it may permit the parties to do so accordingly.
6. Let the aforesaid applications be filed within a period of 1 month from date. Additional written statement may be filed within a period of 1

month thereafter. The Court below shall attempt to pass preliminary decree if so satisfied or orders as it may deem fit within a period of 2 months thereafter.

7. In view of the above, the judgement and decree dated April 29, 2005 passed by the learned Civil Judge (Sr. Division), Islampur, Uttar Dinajpur in Title Suit No. 13 of 2000, shall stand set aside.
8. With the aforesaid observations, F.A. 68 of 2008 shall stand disposed of.
9. There shall be no order as to costs.
10. The non-appearing respondents shall be served.
11. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)