

04.08.2023.
Item No. 07
Court No. 13
pk

F.A. 97 of 2009
Sri Asish Kumar Nanda and others
Versus
Sri Shyamal Kumar Rana and others

Ms. Shohini Chakrabarty,
Mr. Arijit Sarkar

...For the appellants.

Mr. S. P. Pahari

... For the plaintiffs/respondents.

1. The appeal is directed against judgement and order dated 27.08.2008 passed by the Civil Judge (Senior Division) at Contai, Purba Medinipur in Title Suit No. 146 of 2001.

2. The first appellant, Asish Kumar Nanda and other five appellants, namely, Debasish Nanda, Snehasish Nanda, Soudamini Nanda, Santi Panigrahi and Tutu @ Tapati Tripathi have claimed $\frac{1}{4}$ share in the suit property comprising in about 25 decimals of land.

3. The said $\frac{1}{4}$ share originally belonged to Jadabendra Sen and Debendra Sen, who had $\frac{1}{8}$ share each. Debendra was childless and had bequeathed by will, his $\frac{1}{8}$ share in favour of the two sons of Jadabendra, namely, Sailendra Sen and Sitanath Sen. The will was probated.

4. In the impugned judgement, the court below refused to recognise the shares of the appellants/defendant nos. 3 and 5 (ka) to 5 (ana) on the sole ground that they have not been able to

produce a copy of the probate obtained by Sailendra Sen and Sitanath Sen in respect of the will of Debendra Sen.

5. The Court, however, found proved and recorded as exhibits, the application under Section 276 of the Indian Succession Act, 1925 and the judgment allowing probate. The decree of probate, however, was the only missing link.

6. The appellants/defendant nos. 3 and 5 (ka) to 5 (ana) have been admitted by the plaintiffs and the other parties as shareholders by purchase from Jadabendra and his sons of their entire $\frac{1}{4}$ share in the suit property.

7. Admittedly, partition of the suit property comprising of 25 decimals of land was being held and possessed jointly by the shareholders and/or their legal heirs being Ramesh Sen, Asutosh Sen, Sachindra Sen and Jadabendra Sen and Debendra Sen.

8. Even in the evidence, the legal heirs of other co-sharers in the property have admitted that the appellants/defendant nos. 3 and 5 (ka) to 5 (ana) in the suit have $\frac{1}{4}$ share in the suit property.

9. In view of the above clear and unequivocal evidence and the fair judicious submissions of Mr. S. P. Pahari, learned advocate for the respondents, this Court is of the view that the learned Court below may have committed error in denying the shares of the

appellants/defendant nos. 3 and 5 (ka) to 5 (ana) in the suit property.

10. The impugned judgement and preliminary decree dated 27th August, 2008 shall stand modified to include the $\frac{1}{4}$ share in the suit property in favour of the appellants/defendant nos. 3 and 5 (ka) to 5 (ana).

11. The impugned judgement is set aside in part to the extent indicated herein above.

12. Let the Commissioner of Partition be appointed by the Court below within a period of seven days from the date of receipt of a copy of this order.

13. The Commissioner shall submit a report to the Court below within a period of three weeks from appointment. All other formalities thereafter shall be completed by the Court below. After receipt of report of the Commissioner of Partition, final decree may be passed by the court below in accordance with law as expeditiously as possible.

14. F. A. 97 of 2009 is allowed and disposed of.

15. In view of disposal of the appeal, all pending applications are also disposed of.

16. The Lower Court Records shall be sent back to the Court below immediately by special messenger. Cost of such special messenger shall be put in by the appellants/defendant nos. 3 and 5 (ka) to 5 (ana) by 08.08.2023.

17. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)

(*Supratim Bhattacharya, J.*)