

Item-44.	23-03-2023	SAT 13 of 2015 CAN 1 of 2015 (old CAN 932 of 2015)
sg	Ct. 8	Ashutosh Ghosh Versus Ujjala Das & Ors.

The matter initially appeared in the warning list on 29th November, 2022 and thereafter transferred to the regular list on 5th December, 2022. There was a clear indication in the list that the matter shall be transferred to the daily cause list on 5th December, 2022 and since then the appeal is appearing in the list. In spite of having due notice and knowledge that the matter is pending, the appellants are not represented. The appellant has also not taken any step to remove the defects as notified by the Stamp Reporter on 17th January, 2015. It is clear that the appellant is not interested to proceed with the matter.

We could have dismissed the appeal for non-removal of the defects. However, we propose to have a look at the judgments of both the courts in order to find out whether the second appeal involves any substantial question of law.

The appeal is arising out of a judgment and decree dated 08.09.2014 passed by the learned Civil Judge (Senior Division), Ranaghat, Nadia affirming the judgment and decree dated 07.05.2011 passed by the learned Civil Judge (Junior Division), 2nd Court, Ranaghat in a suit for partition. The partition suit was dismissed on contest. In absence of the learned Advocate for the appellant/plaintiff, we have carefully read the judgments of both the courts and the grounds of appeal.

Briefly stated; the suit property originally belonged to Promotho Nath Chakraborty. Said Promotho Nath Chakraborty vide deed no. 172, dated 06.01.1959 sold the suit property to Birendra Kr. Singha and Monmohan Das. While the suit property was being so owned and possessed by Birendra Kr. Singha and Monmohan Das, by an auction sale, dated 21.11.1968, the suit property was purchased by Chandra Mohan Ghosh and Lalit Ch. Singha. Chandra Mohan Ghosh and Lalit Ch. Singha possessed the suit property by partitioning the suit property amongst themselves. The father of the plaintiffs possessed 0.56 decimals. The plaintiffs inherited the 0.56 decimals of Chandra Mohan Ghosh and started possessing same. Later the plaintiffs and the defendants vide deed dated 22.02.1999 sold .020 decimals from 59 decimals to Bhasan Ch. Majumder. The remaining .036 decimal was possessed by the plaintiffs. The suit property has never been partitioned by metes and bounds. On requesting the defendant to partition the suit property the defendant refused and threatened the plaintiffs that she will transfer the sit property to third party. The plaintiffs thus filed the suit for partition.

The defendant had appeared in the Title Suit and filed written statement disputing and denying the plaintiff's case.

On the basis of the aforesaid pleadings, the trial court framed six issues.

The suit plot is of 1.18 acres. The plaintiffs claimed that they have title over 59 decimals of land inherited from their father and out of the 59 decimals they sold 20 decimals to Bhasan Ch. Majumder. The plaintiffs had also stated that after purchase of the suit property by their father Chandra Mohan Ghosh and Lalit Ch. Singha there was a partition of the suit property between them.

However, during evidence PW-1 stated that there was no registered deed of partition nor was there any partition of the suit plot through Court. In absence of any such registered deed, a partition cannot be presumed and on the contrary, the presumption would be that all the co-sharers of the suit property would have right, title and interest over every inch of the suit plot. The plaintiffs even had failed to prove that 20 decimals of land alleged to have been sold to Bhasan Ch. Majumder was sold by any specific demarcation. Bhasan Ch. At the highest would be a co-share on the suit plot. The plaintiffs have also admitted that the land of one Surendra is included in the suit plot but he has not been made a party. The defendant has also admitted that the defendant was the owner of 39 decimals of land. The defendant claimed to have purchased 39 decimals out of 59 decimals owned by Manmohan Das, in the event the defendant is believed that Manmohan Das would also have share in the suit plot. As the plaintiffs admitted that Bhasan and Surendra have their share in the suit plot. In the absence of there being any partition between Lalit Ch. Singha and Chandra Mohan Ghosh from whom the plaintiffs traced their title in the suit property would remain the unpartitioned property and although the co-sharers of the suit property were to be included in the suit. The plaintiffs/appellants had failed to give a clear picture of their title as well as also the title of the defendant/respondent in the suit property. The suit was also bad in defect of the parties. One PW-1 admitted that the defendant has 39 decimals of land in the property then on which basis, the plaintiffs claimed 36 decimals of land was not made clear and the plaintiffs have failed to prove their case over and in respect of 36 decimals of land as claimed in the suit.

The plaintiffs having failed to prove its case is not entitled to a decree of partition. The concurrent findings of facts of both the courts do not call for any interference. We do not find any reason to admit the second appeal as it does not involve any substantial question of law.

In view of the aforesaid observation, the appeal stands dismissed.

In view of the dismissal of the appeal, the connected applications also stand dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)