

47 23.3.2023
Sc Ct. no.8

SAT 25 OF 2015
with
I. A. No. CAN 1 OF 2023

Santosh Chakraborty

Vs.

Ujjal Chakraborty & Ors.

Mr. Sourav Sen
Mr. Arun Kumar Das.

... For the Appellant

We have heard Mr. Sourav Sen, learned counsel in support of the second appeal. On the principle that person having a better title over the suit property is entitled to eviction is the principle that applied by the trial court in decreeing the suit and the appeal court has affirmed the said decree.

It has not been disputed from the Bar that in the written statement in paragraph 8 the appellant has clearly admitted that the suit property was purchased from Jiban Krishno Bandopadhyay in the name of Bibhuti Bhushan Chakraborty who was the father of the original plaintiff Rabindranath Chakraborty.

However, a case was attempted to be made out before the trial court as well as the appellate court that although the suit property stands in the name of Bibhuti Bhushan Chakraborty, it was purchased by all the

brothers and father of the defendant by virtue of the amicable partition.

The appellate court was rightly held that the onus is on the appellant to establish the said fact. Admittedly the appellant has failed to discharge the said onus. Under such circumstances, we do not find any reason to conquer the finding of fact arrived at by the courts on the basis of the evidence on record.

The appeal fails.

There shall be no order as to costs.

In view of the above, the application stands dismissed.

(Soumen Sen, J.)

(Uday Kumar, J.)