

05 12.4.2023

Ct-08

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**SAT 130 of 2015**

**Mihirlal Mardana & Ors.  
Vs.  
Dharanidhar Mahato & Ors.**

Mr. Surya Kumar Chattopadhyay  
Mr. S.R. Kundu  
... For the Appellants

We have heard the learned counsel appearing for the appellants.

We are in agreement with the trial court that the suit is misconceived as it is a settled law that a co-owner cannot have the right to pray for injunction against the other co-owner. The plaintiffs, in our view, ought to have filed a suit for partition. In fact, the dismissal order passed by the trial court and affirmed by the first appellate court does not prevent the appellants to file a suit for partition and other consequential reliefs.

We are of the view that in the event any injunction order is passed in this proceeding, it would be interfering with the rights of the other co-owners and/or other co-sharers, when the joint possession of the properties are admitted. Unless the properties are partitioned by metes and bounds the property remains as a joint property. Moreover, the plaintiffs have failed to establish that they are holding any demarcated portion of the property by way of any mutual arrangement.

Under such circumstances, we do not find any reason to interfere with the order passed by both the courts below.

The appeal is accordingly dismissed.

Learned counsel for the appellants has submitted that the first appellate court has recorded that the defendants in their written statement have admitted that the predecessor-in-interest of the plaintiffs together had 1/4<sup>th</sup> share in the suit property and they have also admitted that the predecessor-in-interest of the plaintiffs namely Kanai and Srikanta together had ¼ th share in the suit property. The defendants have also admitted possession of the heirs of Srikanta (being the plaintiffs herein) though over only a portion of the property. The PW-1 during his cross-examination had admitted that the defendants have purchased a portion of the suit property.

However, in view of the fact that the suit has not been properly framed and the remedy lies in filing a suit for partition, we are unable to grant any relief to the appellants in this proceeding.

There will be no order as to costs.

**(Uday Kumar, J.)**

**(Soumen Sen, J.)**

