

Item-26.
sg 12-05-2023

Ct. 8

SAT 306 of 2015
CAN 1 of 2015 (old CAN 10398 of 2015)

Kalipada Sarkar @ Mondal & Ors.
Versus
Panchanan Mondal & Ors.

Mr. Partha Pratim Roy, Adv.
Mr. Sarbananda Sanyal, Adv.

...for the appellants

The judgment and decree dated 29th January, 2015 passed by the learned Additional District Judge, 4th Court, Murshidabad affirming the judgment and decree dated 6th January, 2010 passed by the learned Civil Judge (Senior Division) at Berhampore is the subject matter of challenge in this appeal.

We have heard the learned Counsel for the appellants. The learned counsel disputed the findings of the Trial Court affirmed by the Appellate Court with regard to 23 decimals of land being sold in favour of the plaintiffs. The learned counsel for the appellants argued that at the relevant point of time Chaitanya Mondal has transferable interest in respect of 23 decimals of land.

From the careful consideration of the judgments of the Trial Court as well as the First Appellate Court it would reveal that the interest of Chaitanya would establish from the RSROR and the subsequent contract between the parties namely, the partition suit between Chaitanya and Charu being Title Suit nos. 200 of 1977 and 67 of 1983 as alleged from the order passed in the said suit namely, the order dated 25th April, 1983 and 18th November, 1983. It appears from the orders that the suit plot no. 95 consisting of 46 decimals was initially made part of the suit property of TS

200/1977 filed by Charu Ch. Mondal and others and subsequently, on the basis of petition filed by Charu and others, this plot no. 95 consisting of 46 decimals was removed from the schedule of the suit property or of the aforesaid proceeding. This factor read with the recording in the RSROR in favour of Chaitanya to the extent of 46 decimals of land out of 43 decimals was gifted to the present appellant to establish the right of Chaitanya to deal with the said property in fact, the argument of the appellant should be self-defeating as if Chaintanya had no interest in respect of 46 decimals of land then he could not have gifted 23 decimals of land in favour of the appellant.

The appeal accordingly fails. However, there shall be no order as to costs.

In view of dismissal of the appeal, the connected application also stands dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)