

18.01.2023
SL No.11
Court No.8
(gc)

**FAT 346 of 2011
CAN 1 of 2022**

**Sri Sambhunath Das
Vs.
Golap Khan & Ors.**

Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray,
...for the Appellant.
Mr. Sukanta Das,
...for the Respondent No.1.
Mr. Shyamal Roy,
...for the Respondent No.10.

By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.

The Trial Court refused to declare the shares of the sole appellant on the ground that the vendors of the sole appellant had sold out portion of the suit property exceeding their share. We are in agreement with the findings arrived at by the learned Trial Court. However, the Trial Court in deciding the issue nos.7 and 8 had observed that the shares of the appellant could not be declared since other co-sharers have not been made parties.

We have been informed that a partition suit has been filed by the defendant/respondent No.10 where all the parties are on record. The impugned judgment shall have relevance only to the extent of the shares to which the sole appellant would be entitled to excluding the

excess share transferred by his vendors. It is not in dispute that the vendors of the sole appellant were the co-sharers. It is submitted on behalf of the appellant that Dhrubalal had transferred his share which is not in excess of the shares to which he is entitled to as a co-sharer. However, the transfer made by Anupama, mother of Dhrubalal may not be taken into consideration as she admittedly had no transferable interest of the shares which she alleged to have transferred. This is not disputed by the respondents. This fact shall be taken into consideration while deciding the partition suit.

In the partition suit pending before the learned Trial Court, Exhibit-1, namely, the sale deed dated 10th March, 2000 executed by Ranjit Kr. Singha shall also be taken into consideration in deciding the shares of the plaintiff in the suit.

With the aforesaid observation, the appeal and the application stand disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)