

**Sri Jhareswar Pradhan
Vs.
Sri Sidheswar Pradhan & Ors.**

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The appeal is defective. However, no attempt has been made to remove the defects. The appeal is of the year 2015.

The appeal appeared in the warning list on 29th November, 2022 with a clear indication that the same shall be transferred to the regular list on 5th December, 2022, since then the matter is appearing in the list. Therefore, the appellant has due notice.

The defects notified by the stamp reporter in his report dated 21. 7.2015 have not yet been removed by the appellant.

Previously the matter appeared on 3rd May, 2016 when the appellant was also not represented.

The appellate decree dated 13th March, 2015 affirming the judgment and decree passed by the trial court on 5th April, 2013 in a suit for declaration, alternative partition and separate possession is the subject matter of challenge in this second appeal.

We have carefully gone through the judgment of the trial court as well as the first appellate court.

We could have dismissed the appeal for non-removal of defects. However, we propose to find out any substantial law is involved in this second appeal.

The trial court dismissed the suit ex parte on the ground that the appellant had claimed title by way of inheritance but could not establish

such right.

Before the first appellate court the plaintiff claimed that the plaintiff and defendants are legal heirs of Chintamoni Pradhan. Chintamoni Pradhan had two wives. The first wife had four daughters and the second wife had five daughters. The plaintiff/appellant is the only son of late Chintamoni Pradhan. The said Chintamoni died on 9th April, 1953. By reason of inheritance the appellant became the owner of his share in the suit property left behind by his father late Chintamoni Pradhan. He claimed entire suit property and he relied upon R.O.R to show his possession. He also claimed to have paid land revenue.

The suit was dismissed ex parte. The certified copy of death certificate was not proved in accordance with law. But the court requires a party to prove a particular fact. It is a duty of a party to adduce all available evidence in the manner prescribed under the law in order to remove all doubts in the mind of the court. The trial court declined to accept the said death certificate in absence of proof. Exhibits 2 and 3 are not exclusive documents about the possession of the plaintiff in the suit property. In our view, the concurrent findings of facts are possible views that can be arrived at on the basis of sufficient evidence.

Under such circumstances, we do not find any reason to interfere with the order passed by the trial court as well as the first appellate court.

The appeal accordingly fails.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage.

There will be no order as to costs.

(Uday Kumar,J.)

(Soumen Sen, J.)