

SAT 371 of 2015

Ct-08

**Miss Rekha Rani Shit & Anr.
Vs.
Sri Sudhir Kumar Shit & Ors.**

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The appellants are not represented.

The matter is appearing in the list since 6th February, 2023. Therefore, the appellants have due notice.

The appeal is defective since 6th August, 2015. Since then no attempt has been made to remove such defects.

The appellate judgment and decree dated 22nd May, 2015 affirming the judgment and decree passed by the trial court on 15th February, 2001 in a suit for preemption filed under Section 20 of the Hindu Succession Act is the subject matter of challenge in this second appeal.

We have carefully gone through the judgment of the first appellate court as well as the trial court. The trial court however, held the suit is maintainable under Section 22 of the Hindu Succession Act, 1956.

The trial court dismissed the suit on the ground of limitation. The first appellate court concurred with the said finding. The suit property is a bastu land. It appears from the evidence on record that the co-sharers, namely, Labanyamayee, Sudhir, Hrishekesh, Srikrishna, Mantu, Minati, Anjali and Kalpana sold 4⁴/₇ decimals of land to one Rahini Shao, respondent no. 1.

In the instant case Kunjabihari Shit who was the original owner of the suit property had three sons, namely, Sudhir, Santosh and Subimal.

Santosh died leaving behind his wife Labanyamayee, three sons namely, Hrishikesh, Srikrishna and Mantu, four daughters namely, Minati, Anjali, Kalpana and Rekha. The suit property was transferred by Labanyamayee, Sudhir, Krisikesh, Srikrishna, Mantu, Minati, Anjali and Kalpana in respect of 4⁴/7 decimals of land to one Rahini Shao by virtue of a sale deed no. 8624 dated 08.08.1978. Here, Rekha Rani Shit, the daughter of Santosh, is the plaintiff/appellant and Rahini Sahoo is the defendant/respondent no. 1. In view of the above mentioned genealogy of Kunjabihari Shit, it appears that Sudhir, Santosh and Subimal are the first class heirs of the deceased Kunjabihari Shit. Sudhir along with other co-sharers sold the suit property. Rekha who is also a co-sharer sold the suit property along with Sudhir where Sudhir, Santosh and Subimal are alive. Rekha cannot be considered as an heir of first class of the schedule of Hindu Succession Act.

In view of the aforesaid, the appellants are not entitled to preempt the transferred property as they did not come under the purview of heirs of Class-I of the Hindu Succession Act.

It transpired that the vendors and vendee are co-sharers and near relatives and the house of the plaintiffs/appellants are situated to the west side of the suit land in the same Mouza. On 23rd June, 1992 the respondent/defendant no. 1 was found to be carried out excavation in the suit land and at that time on being asked the appellants came to know that the respondent no. 1 had purchased the suit land. This case of the appellants was not believable as being a co-sharer and a neighbour they should have the

knowledge of the transfer of the suit land. The said plot was sold fourteen years back was known to the appellants. The evidence on record suggests that the appellants had failed to prove that they had come to know for the first time on 23rd June, 1992 for the purchase of the suit land from the respondent no. 1. Further it appears from the record that the respondent nos. 10 and 11 are the subsequent purchaser of the suit land from the respondent no. 1. They also contested the suit/appeal but as per Section 52 of the Transfer of Property Act, 1882 which provides doctrine of lis pendence which reflects that it is based on the principles that the person purchasing property from the judgment debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Resistance at the instance of transferee of a judgment debtor during the pendency of the proceedings cannot be said to be a resistance or obstruction by a person in his own right and, therefore, is not entitled to get his claim adjudicated (2008) 7 SCC 144.

The concurrent finding of facts on the question of maintainability of the suit and the limitation period are based on proper appreciation of evidence and the relevant provision of law.

In view thereof, we do not find any reason to admit the second appeal. The second appeal does not contain any substantial question of law.

On such consideration, the appeal is accordingly dismissed at the admission stage.

Interim order, if any, stands vacated.

There will be no order as to costs.

(Uday Kumar ,J.)

(Soumen Sen, J.)