

23 **13.06.
2023**

Ct. No. 04

Ab

SAT 232 of 2022

**Satrughana Das and another
Vs.
Purna Chandra Jana and others.**

**Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Abhirup Halder,
Mr. Anirban Saha Roy.**

... for the appellants.

In a suit simplicitor for declaration of title, demarcation of the property and permanent injunction, the trial court proceeded to pass preliminary decree as if the suit for partition has been filed by the plaintiffs/appellants. The said judgment and decree was carried to an appellate court and the same is reversed, as a consequence whereof the suit filed by the plaintiffs/appellants was dismissed.

The plaintiffs/appellants claimed right, title and interest in respect of the suit property by virtue of two separate registered deed of sale executed on 5th July 1991. It is further averred in the plaint that after the execution and registration of the aforesaid deeds their names were duly mutated in the record of rights and, therefore, the defendants/respondents have no right, title and interest in respect thereof.

It is a specific case of the plaintiffs/appellants that the defendants/respondents are the adjacent owners of the property and, in fact, they are in possession of 30 decimals of land. It is alleged in the plaint that the defendants/respondents are trying to encroach upon the suit property from the western side with an intent to raise construction thereupon and having refused to desist from the aforesaid illegal act, the suit came to be filed.

Both the parties laid claims in respect of the properties and it appears that the first witness of the plaintiffs/appellants admits that the entire property cannot be said to be a demarcated one and, in fact, it is a joint property. It is also admitted by the said witness that no measurement was ever taken after the purchase of the portion of the said property and, therefore, there appears to be a dispute in respect of the specific shares and the possession of the parties in commensurate with such shares.

Since it was a suit simplicitor for declaration of title and demarcation and not a suit for partition, the appellate court held that the trial court exceeded the jurisdiction in passing a preliminary decree and directing the parties to take steps for the final decree as if it is a suit for partition.

The right, title and interest of the plaintiffs/appellants is not in dispute; rather it has been held by both the courts below in their favour, but the only question, which hinges before the court below, was whether the property can be said to be a undivided property or divided one where the rights of the parties are duly separated. The dispute, therefore, relates to the aforesaid question and the moment the first witness of the plaintiffs/appellants categorically deposed that the property is un-partitioned, there is no question of any demarcation to be effected treating the same to be a boundary dispute.

The apprehension of the plaintiffs/appellants is that their right, title and interest in respect of the suit property has been clouded but that does not appear to be so as both the courts below have categorically held that the plaintiffs/appellants have right, title and interest in respect of the suit property, but such interest

cannot be held to be exclusive as the property is undivided.

We, thus, do not find any substantial question of law in the instant appeal and the same is hereby dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)