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2023

Ct. No. 04

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SAT 259 of 2022
IA No. CAN 1 of 2023

Sri Tarak Nath Patra
Vs.
Sri Sankar Patra (since deceased) represented by
Chhaya Patra and others.

Mr. Mukteshwar Maity.
... for the appellant.

Mr. Rwitendra Banerjee,
Mr. Sandip Kundu.
... for the respondent no. 1, 3 and 5.

The instant appeal arises from a preliminary decree passed by the trial court and modified by the first appellate court in relation to the extent of shares held by the plaintiffs/respondents in respect of the joint property being the subject matter of the suit.

Indubitably, the property originally belongs to Panchanan Patra, who left behind him surviving four sons, namely, Hiralal Patra, Nagendranath Patra, Maniklal @ Manik Patra and Muktoram Patra. The plaintiffs/respondents are tracing title through Nagendranath and the defendants, who are resisting the claim of the plaintiffs/respondents, are deriving their title from Hiralal and Muktoram. The obvious reason for resisting such decree is that another son, namely, Maniklal Patra divested his right, title and interest in respect of the suit property by executing and registering a deed of sale on 19th January 1948 in favour of Nagendranath.

The trial court while passing the preliminary decree held that the Nagendranath had undivided 1/4th share in respect of the joint property thereby ignoring the fact that the heirs and successors of Maniklal sold, transferred and conveyed their undivided share in respect of the joint property through a deed of sale on

19th January 1948, which constrained the plaintiffs/respondents to assail the said preliminary decree before the first appellate court. The first appellate court noticed the aforesaid fact of divestation of the undivided share by the heirs of Maniklal in favour of Nagendranath and held that the heirs of Nagendranath being the plaintiffs have undivided 1½ in respect of the joint property.

It is sought to be contended by the defendant/appellant that Nagendranath sold, transferred and alienated his share in respect of the joint property in favour of Maniklal and the aforesaid factum has been revealed in the written statement, which the first appellate court has miserably failed to take note of.

We have invited the Counsel for the defendant/appellant to apprise us whether such document by which Nagendranath allegedly transferred his share in favour of Maniklal was produced before the trial court and marked 'Exhibit'. The Counsel for the appellant is unable to disclose the aforesaid fact but banked upon his submission that the moment the defendants have pleaded in the written statement that the Nagendranath divested his right, title and interest in favour of Maniklal, the court ought to have taken note thereof.

There is a distinction between pleading and proof. Mere making a statement in the pleading does not tantamount to a dispensation of proving the aforesaid facts. It is an ardent duty of the litigant to prove the facts pleaded in the pleadings and in absence thereof, there is no ambiguity that the court may proceed that the aforesaid facts having not been proved. The transfer deed dated 19th January 1948 was produced before the trial court, which signifies that the heirs of Maniklal transferred his undivided share in favour of Nagendranath and upon death of Nagendranath, the plaintiffs/respondents inherited the share held by their

father and, therefore, we do not find any infirmity and/or illegality in the impugned preliminary decree passed by the first appellate court holding that the plaintiffs/respondents have undivided half share in respect of the joint property.

The instant appeal does not involve any substantial question of law and the same is hereby dismissed.

In view of the dismissal of the appeal itself, the connected application being CAN 1 of 2023 has become infructuous and the same is also dismissed.

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

(Harish Tandon, J.)

(Madhuresh Prasad, J.)