

03.01.2023
SL No.18
Court No.8
(gc)

SAT 585 of 2013

**Smt. Anima Sarkar
Vs.
Saroj Kr. Sarkar & Anr.**

In spite of notice, the appellant is not represented. In view of our earlier order, we propose to decide whether the second appeal involves any substantial questions of law. We have carefully read the order under appeal. Briefly stated, one Prasanna Kumar Sarkar was the original owner of the property in question. On his death, the property devolved upon the heirs of Prasanna Kumar. He was survived by four sons. Anima Sarkar is the daughter-in-law of Prasanna Kumar and wife of Saroj Kumar Sarkar, the defendant No.1. These four sons had been possessing the property jointly and there was no partition. The defendant No.8 was the sole surviving son of Prasanna. However, three sons died before the institution of the suit. Anadi Prasad Sarkar transferred his share in favour of one of the legal heirs of Banka Behari (one of the sons of Prasanna). Geetarani transferred that partition which she had acquired from Anadi to the present plaintiff by a registered deed of sale. This portion of the property was fully described in the Schedule 2 of the plaint. It is an admitted position that the deed of sale executed by Anadi in favour of Geetarani and thereafter by Geetarani in favour of the plaintiff clearly mentioned the description of the properties with boundary. The plaintiff contended that although it shows a demarcation but no significance could

be attached to it as the property was not partitioned. The defendant Nos.2 to 4 in the written statement has stated that the sons of Prasanna partitioned the property amongst themselves and all of them were in separate possession of the respective portion severing all connections with others. It was a case of family arrangement by way of amicable partition taken place much before the institution of the suit. The Trial Court as well as the First Appellate Court has meticulously considered the evidence and it was found that the said amicable partition was duly acted upon and the description of the property in the sale deed clearly mentioned the property with specific boundary is the result of such partition and evidence of separation. Moreover, the plaintiff having accepted the said document and all the parties having acted on the basis of such document, at this stage, the plaintiff cannot make out a different case and seek partition. The plaintiff is clearly estopped from raising the plea of partition at this stage after it is adequately proved that the four sons of Prasanna during the lifetime has amicably partitioned the properties and severe all relations with each other. These findings of facts, we are not inclined to interfere in the second appeal as it does not involve any substantial questions of law.

The second appeal, accordingly, stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)