

09.09.2024
Court No.13
Item No.33
AP

FA 28 of 2019

**Raj Kumar Ghosh
Vs.
Saraswati Pal & Ors**

Mr. Probal Kumar Mukherjee
Ms. Shebatee Datta

... For the Appellant.

1. The appeal is directed against a judgment and preliminary decree dated 20th March, 2012 passed by the Civil Judge (Senior Division), Burdwan in Title Suit No.88 of 2004. The appellant here is the defendant No.1 in the suit. He is the only son of one Narayan Chandra Ghosh. He had four sisters. One of whom namely Laxmi Ghosh, died leaving behind her son Probal Ghosh.

2. One of the daughters of Narayan Chandra Ghosh namely Saraswati Pal filed TS No.88 of 2004 for partition of her father's property. She sought 1/6th share in the father's property.

3. The admitted facts in the suit are that Raj Kumar Ghosh took the responsibility of cultivation of the entire lands of his father Narayan Chandra Ghosh. He used to deliver the respective shares in the cultivation to his mother and four sisters.

4. Saraswati Pal sought partition of the father's property on 25th March, 2004, which was refused by Raj Kumar Ghosh. She filed the suit T.S. 88 of 2004, against her brother Raj Kumar Ghosh, Probal Ghosh, son of late Laxmi Ghosh, Bhagabati Koley and Krishna Choudhury.

5. During their life time, Bhagabati Koley and Narayani Ghosh, mother of the plaintiff gifted their share in the suit property to Archana Ghosh, wife of Raj Kumar Ghosh, defendant No.1. Archana Ghosh was then impleaded as defendant No.5 in the suit.

6. The defence was led by defendant Nos.1, 3 and 5, who filed written statements. The defence was advanced that the property of Narayan Chandra Ghosh was not partitioned between himself and his brother late Kangali Ghosh.

7. It is, therefore, submitted that the suit is bad for seeking partial partition and non-joinder of the legal heirs of Kangali Ghosh.

8. The Court below found in the oral evidence of the witnesses namely PW 1 and DW 1 that Narayan Chandra Ghosh and Kangali Ghosh were separated for more than 30 years. The witnesses deposed that the records of the BL & LRO indicated that the suit properties stood distinctly separate and identifiable as between Late Narayan Chandra Ghosh and his brother Late Kangali Ghosh.

9. Based on the above, the Trial Court found that the non-joinder of the legal heirs of Kangali Ghosh was not germane to the suit. The suit was held to be maintainable and a preliminary decree of partition was passed. The plaintiff and defendant No.1 to 4 were given 1/6th share each in the property of late Narayan Chandra Ghosh. The defendant No.5, Archana Ghosh received two 1/6th shares that of Narayani Ghosh, widow of Narayan Chandra Ghosh

and daughter of Bhagabati Koley. Her share is 1/3rd of the suit property.

10. In so far as the defence of partial partition is concerned, this Court does not find that the defendants have been able to produce evidence of any other properties of Narayan Chandra Ghosh that have not been included in the suit. The defence of partial partition, therefore, could not have been raised in the first place and the Court below, therefore, rightly did not feel any need to address the same.

11. In view of the above, this Court is of the unequivocal view that the impugned judgement and decree dated 20th March, 2012 ordering preliminary decree of the shares of the parties to the suit calls for no interference.

12. Hence, the instant appeal shall stand dismissed.

13. In view of the dismissal of the main appeal, connected pending applications, if any, shall stand dismissed.

14. Interim orders, if any, shall stand vacated.

15. There shall be no order as to costs.

16. Let the L.C.R., if any, be returned to the court below.

17. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)