

18th April, 2024
(D/L No.10)
(SKB)

SAT 70 of 2014
With
CAN 1 of 2014 (Old CAN 2014 of 2014)
With
IA NO: CAN 3 of 2023

Debasis Saha and others
Versus
Samarendra Nath Saha and others

Mr. Anit Kumar Rakshit
... for the appellants.

1. Heard learned counsel for the appellants on the question of admission. The question of law formulated and advanced by learned counsel for the appellant is that :
 - a) Whether the trial court erred in law in not following the provisions of Order XIV Rule 2 C.P.C.
 - b) Whether the principle of *res judicata* can be made applicable to a partition suit where recurrent cause of action may arise by efflux of time.
 - c) Whether it was proper on the part of both the learned courts below to come to a definite finding on the basis of an earlier suit being T.S.1 of 1987 in the present suit being T.S. 17 of 2005.
2. Having heard learned counsel for the appellants and considering the aforesaid substantial questions of law, we are of the view that the gift deed in favour of Soudamini Dasi had been upheld in the earlier suit i.e. T.S. No.1 of 1987.

3. Legality of the said gift deed was again canvassed in the subsequent suit i.e. T.S. No.17 of 2005. In the earlier suit, the parties were same, the properties were same and the relief claimed was almost identical. No law has been brought to our notice to canvas the point that principle of *res judicata* as outlined in Section 11 C.P.C. and principle of constructive *res judicata* as outlined in Order II Rules 1 and 2 C.P.C. are not applicable to a partition suit.
4. On thorough scrutiny of the judgment rendered by learned trial court and the appellate court, we find that the trial court had formulated as many as five issues and he has discussed and answered each issue on discussion on evidence on record.
5. So far as the previous judgment in T.S. No.1 of 1987 is concerned, it has been brought on record under Section 40 of the Evidence Act and rightly learned trial court has taken into consideration the finding in the aforesaid judgment in one of the issue.
6. Having found that the question regarding validity of the gift deed having been closed by the civil court in T.S. No.1 of 1987 and in the appeal arising therefrom, the validity of the same could not have been challenged in a subsequent suit nomenclatured as partition suit.

7. Furthermore, from the previous judgment in T.S. No.1 of 1987 as we find from the trial court judgment in the instant case, one of the issue was have the plaintiffs' right, title and interests in the suit property. Such issue was decided against the plaintiffs in the aforesaid T.S. No.1 of 1987 and the same was affirmed in the appeal.
8. In view of such fact, the trial court came to correct finding that the subsequent suit is barred by Section 11 C.P.C. In view of such fact, none of the point of law as advanced before us, qualify to be a substantial question of law.
9. Accordingly, we decline to admit the appeal. The appeal is dismissed. All connected applications stand disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)