

10.04.2025
SI No.4
Court No.8
(gc)

FA 98 of 2012

**Smt. Anima Rani Sam
Vs.
Smt. Renuka Debi & Ors.**

Mr. Rudra Prasad Motilal
... for the Appellant.

1. In spite of repeated opportunities being given to the defendants/respondents to appear and contest the proceeding, it can be presumed that they are not inclined to contest the proceeding as they have remained absent in spite of service of notice.
2. The short point required to be decided in this appeal is with regard to the declaration and distribution of the shares amongst the plaintiff and the defendants in respect of "B" schedule property. The learned Civil Judge has recorded that the defendants have taken a specific plea that after demise of Felaram Mondal, his three sons, namely, Govinda Chandra Mondal, Madan Mondal and Narayan Chandra Mondal became the owners and they were in possession of undivided having 1/3rd share each. The defendants have produced two deeds of gift bearing

no.1725 for the year 1966 and 861 for the year 1961 to show that Madan Mondal had transferred a portion of the "B" schedule property to Narayan Chandra Mondal and, accordingly, the defendant nos.1 to 9 being the legal heirs of Narayan Chandra Mondal became the owners of 10 annas 13 gondas 1 kata 1 kranti share in respect of "B" schedule property. The share as claimed by the defendants does not cover the entire share of "B" schedule property. Govinda Chandra Mondal and Narayan Chandra Mondal were the co-owners of the property is not in dispute, although the record-of-rights is only having a presumptive value with regard to the possession and it does not create any right, title and interest of the parties named in the said record-of-rights. The fact remains that Govinda Chandra Mondal was having 1/3rd share in the said property. By reason of acquiring interest of Madan Mondal by Narayan Chandra Mondal by virtue of two several deeds of gift, the plaintiff would be entitled to the remaining share in the property, meaning thereby, the share of Govinda Chandra Mondal in absence of the plaintiff establishing that the said property was purchased by her father Govinda

Chandra Mondal. Moreover, it appears that the plaintiff has stated in the plaint that the plaintiff sold away 62 cents of land in favour of the defendant nos.10 to 12 out of entire “B” schedule property and at present the plaintiff has .77 acre of land in respect of the “B” schedule property.

3. In view thereof, the Trial Court is directed to pass a preliminary decree to the extent of share the plaintiff would be entitled to in law in respect of “B” schedule property after taking into consideration the aforesaid facts. It cannot be disputed that Govinda Chandra Mondal had a share in the “B” schedule property and the share of the plaintiff has to be determined after taking into consideration of the two gift deeds by which Narayan Chandra Mondal had acquired interest. The plaintiff also claimed to have sold 62 cents of land in favour of the defendant nos.10 to 12.
4. The appeal is allowed in part.
5. The Trial Court is required to modify the preliminary decree in respect of “B” schedule property in terms of the aforesaid direction.
6. Accordingly, the appeal is disposed of.
7. However, there shall be no order as to costs.

8. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Smita Das De, J.)