

14th July,
2025
(AK)
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S.A.T 94 of 2025
IA No: CAN 1 of 2025

Satya Ranjan Kuity
Vs.
Sri Narayan Chandra Kuity and another

Mr. Supravat Bhattacharya
Mr. Kanailal Samanta
...for the appellant.

Mrs. Usha Maiti
Mr. Sukanta Das
Mr. Sakya Maity
...for the respondent no.1.

1. Leave is granted to the learned Advocate for the appellant to carry out the necessary further correction in the valuation statement in the Memorandum of Appeal by depicting the correct valuation of the suit therein.
2. Such correction shall be carried out during the course of the day.
3. Insofar as the second defect is concerned, as pointed out by the Stamp Reporter, the same calls for rectification by sending down the certified copy of the impugned trial court's decree for the purpose of correction.
4. The Office shall do the needful in that regard.

5. However, in the meantime, we take up the appeal for hearing under Order XLI Rule 11 of the Code of Civil Procedure.
6. The present second appeal has been preferred against a judgment of reversal.
7. The trial court dismissed the plaintiffs/respondents' suit for declaration of title and eviction whereas the appellate court reversed the same, against which the defendant/appellant has come up before this court.
8. Learned counsel for the appellant submits that the learned First Appellate Court erred in law in reversing the judgment of the trial court without taking into consideration the fact that the entire property was undemarcated, since undemarcated portions were transferred to the plaintiffs as well as to the defendant by the original owners of the property and, as such, the suit was bad for non-joinder of the other co-owners.
9. That apart, during pendency of the *lis*, the plaintiffs transferred a portion of the property to a third party who was not impleaded in the suit.
10. Thus, the suit is also bad for non-joinder of the transferee.
11. In any event, it is argued, in the absence of any specific demarcation by partition by metes and

bounds, no declaration of title regarding any specific portion of the property could have been granted in favour of the plaintiffs/respondents.

12. We find from the elaborate judgment of the First Appellate Court that the Appellate Court has dealt with all the above issues, being the last court of facts.
13. Insofar as the argument of the defendant/appellant regarding there being no partition by metes and bounds, it was recorded by the First Appellate Court, on the basis of documentary evidence, being Exhibits-2 and 3 in the suit, that all the three original co-owners of the property had transferred eleven and half decimals of land on the extreme northern portion of the suit plot no.919 (which is the suit property) in favour of the plaintiff whereas on the same date, all the said three co-owners sold conjointly the rest eleven and half decimals of the concerned plot no.919 in favour of the defendant by another registered deed in respect of the southern part.
14. In view of a specific, demarcated half of the plot, being specifically enumerated to lie on the north of the property, having been transferred to the plaintiff whereas the other half, being specifically enumerated to be on the southern side of the plot,

being transferred in favour of the defendant, and since such transfer deed was executed by all the three co-owners acting as a single unit, such transfers were equivalent to a transfer by the exclusive owner of the property by specific demarcation to different persons.

15. If the exclusive owner or all the co-owners of a property transfer different demarcated portions of the property to different persons, there arises no further need of partition by metes and bounds, since the very transfer of separate, demarcated portions of the property by all the co-owners itself purports to operate as such partition.
16. Hence, the argument as to the property being joint and there being other co-owners, for non-joinder whom the suit was bad, falls flat.
17. Regarding the transfer of a portion of the property of the plaintiffs to a third party, since it transpires from the findings of the appellate court that the said transfer was also in respect of a specific portion of the plaintiffs' portion of the property, the transferee by virtue of such deed need not have been impleaded as a party to the suit, since he was not a "co-owner" of the property.
18. In any event, even if one of the co-owners of a property sue for eviction against a licensee /

trespasser, as in the present case, the non-impleadment of the other co-owner(s) would not vitiate the maintainability of the suit itself.

19. Hence, we find that the learned Judge of the First Appellate Court, being the last court of facts, elaborately dealt with all the issues involved in the suit and adverted to each of the findings of the learned Trial Judge and, upon consideration of evidence, arrived at factual findings, which cannot be reversed by the second Appellate Court merely because a different view might have been possible on the self-same body of evidence.
20. That apart, the questions raised before us, as indicated above, all pertain to factual issues or, at best, mixed questions of fact and law, and as such, no substantial question of law worth admitting the second appeal has been made out by the appellant.
21. In such view of the matter, SAT 94 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
22. Consequentially, CAN 1 of 2025 is also dismissed.
23. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)