

AD-18
Ct No.16
05.02.2025
TN

SA 85 of 2024
IA No: CAN 2 of 2024

Md. Soleman Ali
Vs.
Hamidur Rahaman and another

Mr. Partha Pratim Roy,
Mr. Gourav Das,
Ms. Madhumanti Das

....for the appellant

1. The present second appeal has been preferred against a judgment of reversal on a limited point.
2. The suit, from which the appeal arises, was filed by the plaintiff/appellant for declaration of his title in respect of the suit property, that is, 57.5 cents out of the total 72 cents of the concerned property.
3. The learned Trial Judge came to the finding that in the absence of any prior partition having been established by the plaintiff, the plaintiff's share in respect of 57.5 cents of land on the suit property was declared and the defendant no.1 was declared to be one of the other co-sharers of the suit property.
4. The learned Appellate Judge reversed the findings of the trial Court and dismissed the suit by allowing the appeal, *inter alia*, on the finding that the plaintiff has failed to prove his title by dint of chain deeds for the entire antecedent period. Secondly, the learned first Appellate Judge also observed that the subject-

matter of the suit is not the entire 72 decimals but only 57.5 decimals over which the plaintiff sought exclusive title and, as such, the suit is bad on such count as well.

5. The learned Appellate Judge also proceeded on the premise that title must be specifically pleaded and proved and cannot be conferred by mere admission.
6. We agree with the findings of the learned Appellate Judge to the extent that the entire joint property of the parties to the extent of 72 decimals was not made the subject-matter of the suit. The plaintiff arbitrarily chose 57.5 decimals out of the said property as the suit property, despite having undivided share in the rest of the total property too, without any prior partition or demarcation of the total 72 decimals of property being proved.
7. As such, the suit is bad on such count alone.
8. However, we have some reservations as to whether, even if the plaintiff failed to prove the link in the antecedent chain deeds insofar as the title of one of the vendors Md. Taiyeb having been established, the plaintiff's title derived through other deeds executed by the other co-sharers of the property could be negated by the learned Appellate Judge.
9. In any event, we are of the opinion that since the suit was bad at the threshold on the ground of non-joinder of all the joint properties of the parties in the

hotchpot of the suit, the merits of the suit otherwise could not have been gone into and the findings rendered by the courts below on the other issues cannot operate as *res judicata* in future suits if filed by the plaintiff on a continuing or subsequent cause of action, either for declaration of his share regarding the entire joint property and consequential reliefs or for partition.

10. However, in the light of the above observations, we do not find any reason to interfere with the findings of the Appellate Court. Hence, no substantial question of law being involved, SA 85 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure, however, in the light of the above observations.
11. CAN 2 of 2024 stands disposed of accordingly as well.
12. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)