

SAT 3491 of 2003
Sri Manindra Nath Mahato & Ors.
Vs.
Mohan Mahato & Ors.

1. The appellants are not represented nor any accommodation is prayed for on behalf of the appellants. Even on earlier occasion, the appellants were not represented.
2. The second appeal is arising as against judgement of affirmation in a suit for partition.
3. The plaintiff filed a suit for declaration that the plaintiff having 1/5th share and has claimed partition of the suit properties based on such shares. It appears both the Courts have dealt with the devolution of interest of the parties in respect of the suit property and have arrived at a conclusion that the plaintiffs, after demise of their father by way of inheritance acquired 3/5th Share of the schedule property. In so far as the possession of the suit plots and reclamation thereof are concerned P.W. 1 has categorically deposed that they reclaimed seven suit plots and erected huts on some of the suit plots. The defence has failed to elicit any contradiction to outweigh his testimony of P.W. 1. Moreover P.W. 2 had deposed that the plaintiff's reclaimed the suit plots and converted the Danga lands into Paddy lands. On the basis of such fairly credible testimony the learned Trial Court decreed the suit by declaring the share with a direction to the parties to make amicable partition within two months from the date failing which either of the parties would at liberty to move the

Court for appointment of a pleader commissioner to effect partition by metes and bounds. The findings of facts being on oral and documentary evidence by both the Courts unless it appears to be perverse cannot be admitted in the second appeal. Although, we could not have the opportunity to hear out the appeals but we have meticulously read the judgment of the learned Trial Court as well as the first appellate Court and also the grounds of appeal. The grounds of appeal are not essentially based on the questions of fact.

4. On such consideration, we do not find any merit to admit the second appeal.
5. The second appeal does not involve any substantial question of law. Accordingly the appeal is dismissed.

(Soumen Sen, J.)

(Apurba Sinha Ray, J)