

AD - 12
Ct No.16
11.02.2026
(SSS)

SAT 16 of 2025

Madhusudan Naskar and Ors.
Vs.
Sri Prabhas Chandra Naskar

Mr. Pankaj Halder,
Mr. Subhas Chandra Basu,
Mr. Bidish Ghosh,
Mr. Tapas Kumar Manna,
Mr. Neelabha Bera

.....For the appellants.

1. The plaintiff in a suit filed under Section 44 of the Transfer of Property Act has preferred the present second appeal. The learned Trial Judge decreed the suit but the learned first appellate Court reversed the same on several grounds.
2. Learned counsel for the appellants argues that in view of the plaintiffs/appellants being family members and co-sharers in respect of the subject dwelling house, the learned first appellate Court erred in law in reversing the judgment of the learned Trial Court, despite the learned Trial Judge having arrived at the finding that the

defendant/respondent is a stranger in respect of the property.

3. It is next contended that the learned first appellate Court erred in law in holding that the suit was bad for non-joinder of the other co-sharers, since no relief has been claimed in the suit against the other co-sharers.

4. However, we cannot accept the submissions of the appellants on any of the above counts.

5. The learned Judge of the first appellate Court, in the impugned judgment, clearly observed that the learned Trial Court had expressed clearly in its decision that it is not clear as to whether the defendant has blood relation with the plaintiffs or not and whether he can be termed as a member of the family of the plaintiffs.

6. The learned first appellate Court accordingly held that without being satisfied of the fact that the defendant is a stranger, the learned Trial Judge could not have passed a decree within the contemplation of Section 44 of the Transfer of Property Act, since the defendant being a stranger to the family dwelling house is a *sine qua non* of Section 44.

7. The learned first appellate Court also observed that while deciding the issue, the learned Trial

Judge took note of a Solenama decree passed in connection with an earlier suit, bearing Title Suit No. 35 of 1967 (Exhibit 2), where the father of the defendant had been noted as “Jnyati”, meaning a relation by consanguinity or cognation, i.e. relatives having blood relation with each other. Therefore, it was held, the assessment pertaining to the status of the defendant as made by the learned Trial Court was based on a wrong footing.

8. That apart, the learned first appellate Court also observed that the plaintiffs were merely co-owners of the property and as such, did not have a demarcated or a definite share in the property. Thus, the suit, describing the suit property arbitrarily to be 3 decimals out of the total joint property, was bad in law.

9. We find from the description in the plaint schedule that the plaintiffs/appellants have arbitrarily selected 3 decimals of the total property, which is admittedly an undivided joint property of different co-sharers including the plaintiffs, without having any definite share in respect of a particular demarcated portion of the property.

10. It is well-settled that the possession of a co-sharer in respect of a portion of a joint property is

deemed to be on behalf of all the other co-sharers. Thus, no injunction could have been passed at the behest of the plaintiffs in respect of merely an undemarcated share of the suit property.

11. That apart, we also do not find from the description of the suit property in the plaint schedule that the same is, in its entirety, a family dwelling house. In fact, the plaint schedule does not describe the suit property to have any structure thereon at all.

12. Although learned counsel for the appellants seeks to impress upon the Court that in a local inspection held in the suit, a dwelling house was found on the suit property, still, there is nothing before us to show that the dwelling house covered the entire property. Moreover, no proof can be adduced beyond the pleadings and as such, since the suit property has been described in the plaint schedule without any mention of any structure, we cannot also come to the conclusion that the suit property is a family dwelling house, as rightly observed by the learned first appellate Court.

13. In such view of the matter, the non-joinder of the other co-owners, who have never sought any injunction against the alleged stranger purchaser/defendant, also acquires relevance.

14. Thus, we find no illegality or error in the judgment and decree of the learned first appellate Court.

15. Accordingly, since no substantial question of law is involved, SAT 16 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. There will be no order as to costs.

16. Parties shall act on the server copy of this order, duly downloaded from the official website of this Court.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)