

Uma Devi Vs. Smt. Chandra Devi and ors.

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SooperKanoon Citation : sooperkanoon.com/470326

Court : Allahabad

Decided On : May-04-2009

Reported in : 2009(3)AWC2466

Judge : Tarun Agarwala, J.

Appellant : Uma Devi

Respondent : Smt. Chandra Devi and ors.

Disposition : Petition dismissed

Judgement :

ORDER

Tarun Agarwala, J.

1. The suit was decreed and the property was partitioned equally between the plaintiff and the defendant. While decreeing the suit, the Court directed that a preliminary decree be drawn, against which, the defendant preferred an appeal which was dismissed in default and a restoration application has been filed which is pending. In the meanwhile, an application was filed before the trial court to the effect that an Amin's report be called to ascertain the share of the parties as per the decree. The Amin submitted a report defining the shares of the property. An objection was filed by the judgment debtor which has been rejected by the impugned order and the trial court directed that a final decree be prepared. The

defendant, being aggrieved has filed the present writ petition.

2. In my opinion, the writ petition is not maintainable. The order of the trial court partakes the nature of a decree as defined under Section 2(2) of the C.P.C. In *S. Satnam Singh and Ors. v. Surender Kaur and Anr.* 2009 (74) ALR 796 : 2009 (2) AWC 1414 (SC). the Supreme Court held that in order to determine as to whether an order passed by the Court is a decree or not, it must satisfy the following test, namely:

(a) There must be an adjudication.

(b) Such an adjudication must have been given in a suit.

(c) It must have determined the rights of the parties with regard to all or any of the matters in controversy of the suit.

(d) Such determination must be conclusive in nature.

(e) There must be a formal expression of such adjudication.

3. In the light of the aforesaid observations, this Court finds that the court below had earlier decreed the suit for partition in equal shares. The court below has by now accepted the Amin's report and rejected the objection of the petitioner and the share has now been demarcated. Consequently, there has been an adjudication between the parties. The rights of each parties has been determined and such determination is conclusive in nature. The court below has directed that a final decree be prepared which amounts to a formal expression of such adjudication. In the light of the aforesaid, this Court is of the opinion that the order of the trial court is a decree within Section 2(2) of the C.P.C. and consequently, appealable.

4. The writ petition is not maintainable and is dismissed.