

Alok Kumar Rastogi and anr. Vs. R. Subramaniam and ors.

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Court : Patna

Decided On : Apr-06-2010

Judge : Mungeshwar Sahoo, J.

Appellant : Alok Kumar Rastogi and anr.

Respondent : R. Subramaniam and ors.

Judgement :

Mungeshwar Sahoo, J.

1. This first appeal is directed against the Judgment and decree dated 21.8.1998 passed by Sri Ram Gati Sharma, Subordinate Judge-VIth, Patna, in Title Partition Suit No. 194 of 1994.
2. According to the office note since the appeal notice had not been served on the respondents No. 3 to 5, the appeal is not ready for final hearing.
3. The learned Senior counsel Sri Sukumar Sinha appearing on behalf of the appellants submitted that the appeal notice may be dispensed with because they have already sold the property and they have no interest in this case and they are not pursuing the matter.
4. The learned Counsel appearing on behalf of the plaintiff-respondent No. 2 has admitted this fact.

5. The learned Senior counsel Sri Sinha submitted that the dispute was with respect to right to purchase the property by the plaintiffs-respondents No. 1 and 2 who filed the Title Partition Suit No. 194 of 1994 for their 1/4th share and in that suit also they prayed that they had a right to purchase 3/4th share of the respondents No. 3,4 and 5 who had sold their 3/4th share to the appellants who are the purchasers. The learned court below by this impugned Judgment and decree dated 21.8.1998 passed by Sri Ram Gati Sharma, Subordinate Judge-VIth , Patna, decreed the suit. The purchasers filed this first appeal against the said Judgment and decree challenging that part of the Judgment and decree whereby right to purchase 3/4th share of the property was granted to the plaintiffs No. 1 and 2.

6. After decree the plaintiffs-respondents filed execution case i.e. Execution Case No. 8 of 2005 in the court below for executing right under Section 4(1) of the Partition Act. They prayed that the sale deed may be executed by the purchaser in favour of the plaintiffs. The purchaser- appellants herein filed an objection before the executing court and raised question that because the partition suit was filed by a co- sharer, Section 4 (1) of the Partition Act was not applicable. It is applicable only in case the purchasers filed a partition suit. The objection was overruled by the executing court by terms of order dated 16.5.2006. Against that order the appellants filed Civil Revision being Civil Revision No. 927/06 before this Court. By order dated 6.8.07 passed in C.R. No. 927/06 this Court held that right of co-sharer under Section 4(1) of the Partition Act is available only if transferee, i.e. purchasers of co-sharer of a joint family property files suit for partition. This aspect was over looked by the executing court and this Court further held that the order passed by the court below was completely without jurisdiction and the order passed by the court below was set aside. Against the said order the plaintiff respondents No. 1 and 2 filed petition for Special Leave to Appeal (Civil) No. 22015/07. The Honble Supreme Court by terms of order dated 21.1.2008 dismissed the Special Leave to Appeal petition.

7. The learned Counsel appearing on behalf of the plaintiffs-respondents No. 1 and 2, namely, Sri Upendra Kumar Singh admitted the fact and submitted that, in fact, after the order passed by the Honble Supreme Court the plaintiffs have also

sold their 1/4th share to the appellants. The learned Counsel further admitted the fact that now the appellants are the absolute owner of the suit property which is a house property. The registered sale deed executed by the plaintiff-respondents with regard to his 1/4th share is referred to at the time of hearing.

8. In view of the above facts and circumstances of the case that part of the judgment and decree passed by the court below by which right to purchase 3/4th share was given to the plaintiffs-respondents No. 1 and 2 is hereby set aside.

The other part of the decree decreeing the suit 1/4th share was not challenged by the appellants.

In the result, this appeal is allowed in part to the extent indicated above. The share of the plaintiff- respondents No. 1 and 2 to the extent of 1/4th share is hereby confirmed. The lower court records be sent down to the court below forthwith.

Let the L.C.R. be sent down to the court concerned through special messenger, if the cost of the same is deposited by the respondents No. 1 and 2.

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