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Court : Kolkata

Decided On : Apr-07-1981

Reported in : AIR1981Cal266

Judge : B.N. Maitra, J.

Acts : [Transfer of Property Act, 1882](#) - Section 41; ;[Provincial Small Cause Courts Act, 1887](#) - Schedule - Article 4

Appeal No. : C.R. No. 3893 of 1968

Appellant : Balaram Pramanik and ors.

Respondent : Arbinda Pramanik and ors.

Advocate for Pet/Ap. : Swadesh Bhusan Bhunia, Adv.

Judgement :

ORDER

B.N. Maitra, J.

1. The plaintiffs instituted the suit for recovery of damages. The allegation is that the property of the Schedule Ka to the plaint was purchased by them from one Aswini Das. The property of the Schedule Kha belonged to the plaintiffs and to his brother, Apurba. Long ago an amicable partition was effected amongst them and thereby Apurba possessed Plots Nos. 391 and 407, whereas the plaintiffs

possessed Plots Nos. 392 and 408. Apurba died in 1345 B. S. leaving his widow Bhadreswari. She sold Plots Nos. 391 and 407 to the plaintiffs by a registered kobala dated 21st December, 1941, the purchase being made by the plaintiffs in the benami of defendant No. 6 and in the name of Prafulla's son. The latter died unmarried. The plaintiffs were in possession of all those 4 plots. On the 8th Agrahayan, 1371 B. S., the defendants forcibly harvested paddy grown on those lands by the plaintiffs. The suit is for recovery of Rs. 200/- as damages.

2. The defendants filed a written statement alleging inter alia that there was no partition between Tarak (deceased plaintiff) and Apurba. All the 4 plots of the Schedule Kha were in the possession of Apurba. After Apurba's death, his sons inherited the properties of the Schedule Kha. Bhadreswari was not Apurba's wife because one Sarada was his wife.

3. The learned Munsif accepted the plaintiffs' version in part and decreed the suit for Rs. 86.75 p. An appeal was preferred. The learned District Judge modified that decree and allowed Rs. 62.50 p. as damages for paddy and straw removed from the disputed plots Nos. 391 and 407 with proportionate costs. Hence this revisional application.

4. The learned Advocate appearing on behalf of the defendants-petitioners has contended that even according to the findings of the learned District Judge, they are co-sharers regarding disputed plots Nos. 391 and 407. There is no case that those plots were allotted to Apurba by any partition or by any amicable arrangement. Since, the learned District Judge says that the petitioner are co-sharers, no compensation, can be asked for from them unless the property is actually partitioned by metes and bounds. Moreover, in view of the Item 4 of the Small Cause Courts Act, the present question of title cannot be determined in the present suit.

5. The question of jurisdiction was not raised in the Courts below. Moreover, a money suit was filed and not a Small Cause Court suit. Hence no question of want of jurisdiction of the learned Munsif to try the money suit can arise.

6. Then about the merits. Law in this respect is well-settled after the decision of Robert Watson v. Ram Chand Dutta in (1890) 17 Ind App 110 (PC) and Midnapore Zemindary Company v. Naresh Narayan in 51 Ind App 293 : (AIR 1924 PC 144). Following those decisions in the case of Renupada v. Oramba in (1958) 62 Cal WN 816 at p. 818 Renupada Mukherjee, J., has stated that where some co-sharer is in exclusive possession of the joint property, claim for compensation by the other co-sharer, who is not in possession, cannot be entertained. It was held that the exclusive possession of one co-sharer would be sufficient to enable him to get compensation from the other co-sharer and there need not be any ouster or declaration of hostile title. Law is that a co-sharer in exclusive possession can maintain the same and recover possession from the other co-sharer if the latter forcibly appropriates the profits thereof.

7. The learned District Judge has pointed out that the plaintiffs are in exclusive possession of plots Nos. 391 and 407. That is sufficient for the plaintiffs-opposite parties to ask for compensation. The decision of the learned District Judge is correct. Hence the arguments advanced on behalf of the petitioners cannot be sustained.

8. The Rule is, therefore, discharged.

9. There will be no order as to costs.

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