

Saksena Brothers (P) Ltd

Vs

Bhudhar Chandra Banerjee and Others

Civil Appeal No. 369 of 1969

(H.R. Khanna, R.S. Sarkaria JJ )

10.01.1977

JUDGMENT

KHANNA, J. –

1. This appeal on certificate arises out of a suit for partition brought by Bhudhar Chandra Banerjee, plaintiffs-respondent, on March 4, 1937. The plaintiff in that suit claimed one-half share in certain properties, including the properties situated on Jackson Lane, Calcutta. The suit was dismissed by the trial Court, but on appeal to the High Court there was a compromise between the parties and a preliminary decree was awarded in favour of the plaintiffs on July 27, 1945. A local commissioner was thereafter appointed to partition the property. The local commissioner submitted a report, and in accordance with his report, a final decree was prepared on February 14, 1947. In execution of the final decree, the parties were delivered possession of the property which fell to their share in August 1947.
2. As mentioned above, the property, which was the subject-matter of the partition suit, included the property situated in Jackson Lane. One part of that property was allotted to the defendants and the same is stated to be numbered 4A, while the other part which is stated to be numbered 4B fell to the share of the plaintiff. The property which fell to the share of the defendants was purchased by Saksena Brothers (P) Ltd., the appellant.
3. On March 11, 1959 an application was filed under Sections 151 and 152 of the Code of Civil Procedure by the appellant before the trial Court for correction of the final decree on the ground that the local commissioner while effecting partition by metes and bounds had made wrong calculation of the area. It is stated that on account of that mistake the area in dispute was wrongly shown as having fallen to the share of the plaintiff. This application was allowed by the trial Court as per order dated October 16, 1963. The plaintiff thereupon filed an application under Section 115 of the Code of Civil Procedure to the High Court against the order of the trial Court. The High Court accepted the revision petition and dismissed the application under Sections 151 and 152 of the Code of Civil Procedure as per order dated September 24, 1964. It is this order which is the subject-matter of this appeal.
4. During the pendency of these proceedings, it is stated on behalf of Serajul Haq, respondent 13, that he took the property 4B, Jackson Lane, Calcutta on lease for sixty years from the plaintiff.
5. At the hearing of the appeal, Mr. Jagdish Swarup, learned Counsel for the appellant, states that there has been a settlement between the appellant and the plaintiff-respondent, and that the deed of settlement has been filed in this Court. Mr. Jagdish Swarup on behalf of the appellant and Mr. Patel

on behalf of Bhudhar Chandra Banerjee plaintiff-respondent affirm that compromise and state that the same is binding upon their clients. As against that. Mr. Desai on Behalf of respondent 13 states that his client is in possession of the property in dispute as a lessee and he is not bound by the compromise between the appellant and the plaintiff-respondent. According further to Mr. Desai, whatever right, title and interest was retained by Bhudhar Chandra plaintiff-respondent has been sold in court auction. In reply to that, Mr. Jagdish Swarup asserts that the property in dispute has not been leased out to respondent 13 and that the only person with whom it was necessary for the appellant to enter into a compromise with respect to the property in dispute was the plaintiff-respondent.

6. The only question which has been agitated before us is whether the property in dispute has been leased out in favour of respondent 13 and whether he is bound by the settlement arrived at between the appellant and Bhudhar Chandra plaintiff-respondent. It is obvious that this is a matter which cannot be gone into by this Court in this appeal against an order dismissing the application under Sections 151 and 152 of the Code of Civil Procedure. Learned Counsel for the parties present state that it would be open to the person feeling aggrieved to establish his claim with respect to the property in dispute in a separate suit. In the circumstances, Mr. Jagdish Swarup withdraws the appeal and the same is accordingly dismissed as withdrawn with no order as to costs. We make it expressly clear that we express no opinion on the merits of the case.

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