

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2916 OF 2010
(ARISING OUT OF SLP(C)No.17144 of 2008)

MOTHURU NARAYANA (D)
THR.LRS. & ORS.

... APPELLANTS

VERSUS

PADMIDIMUKKALA SATYANARAYANA

...RESPONDENT

O R D E R

Leave granted.

2. Plaintiff is the appellant and being aggrieved by the judgment and decree passed by the Andhra Pradesh High Court affirming the judgment and decree of the First Appellate Court, modifying and setting aside the judgment and decree passed by the trial court in favour of the plaintiff has filed this appeal by special leave. The suit property is a dwelling house measuring 410 square yards, situated at Repalle Town. The defendant who is the respondent herein is the owner of 3/4th share of the said property and one Shri Anikendu was the owner of balance 1/4th share. The plaintiff

purchased the aforesaid 1/4th share of the property under Exhibit A1 for consideration of Rs.3,000/- on 18.2.1976 and thereafter filed a suit seeking for decree of partition of his share. During the pendency of the suit an amendment application was filed seeking to add the relief for delivery of possession of 1/4th share of the suit property. The trial court after hearing the parties, decreed the suit. Aggrieved by the aforesaid judgment an decree passed, the defendant filed appeal before the First Appellate Court which modified the decree passed by the trial court holding that the plaintiff is entitled to 1/4th share of the suit property but in terms of Section 4 of the Partition Act, he would be entitled to receive a sum of Rs.3,000/- towards the value of his 1/4th share with interest at the rate of 6% per annum thereon from the date of purchase i.e. 18.2.1976 from the defendant.

3. Aggrieved by the said judgment and decree of the First Appellate Court the plaintiff filed Second Appeal before the High Court. The High Court considered the respective pleadings as also the evidence adduced by

the parties. It upheld the judgment and decree passed by the First Appellate Court and while doing so referred to pleading of the defendant that he is willing to buy 1/4th share from plaintiff. The High Court took note of para 4 of the written statement wherein the defendant himself had admitted that the plaintiff is entitled to 1/4th share in the suit property. Accordingly the High Court observed as under :

“The only course left to the plaintiff is to offer his interest in the suit house to the defendant as he is admittedly the stranger and the house is a dwelling house and in view of the impracticability of any partition by metes and bounds, the defendant is willing to purchase the plaintiff's interest at the market value.”

4. The High Court thereafter referred to the provisions of Section 4 of the Partition Act and directed the defendant to pay a sum of Rs.3,000/- along with interest at the rate of 6 per cent per annum from the date of the purchase.

5. We have heard the learned counsel appearing for the parties and have also perused the record.

6. Counsel appearing for the appellant drew our attention to Section 4 of the Partition Act and forcefully contended that the purchase money of the year 1976 ought not to have been assessed as the proper valuation of the share envisaged under Section 4 of the Partition Act. We find force in the said submission of the counsel appearing for the appellant. Section 4 of the Partition Act, which is relevant for the purpose reads as follows :

"4. Partition suit by transferee of share in dwelling-house.-(1) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section."

7. From a plain reading of Section 4(1), it is evident that if any member of the family who happens to be a shareholder, undertakes to buy the share of a transferee, the court shall make valuation of the share transferred. For making valuation, the parties have to be given an opportunity to lead evidence.

8. Neither the First Appellate Court while modifying the decree nor the High Court while affirming the said decree had undertaken the aforesaid exercise. The trial court had also not adverted to this issue at all. There is no dispute with regard to the share of the respective parties so far as the suit property is concerned. There is no evidence in regard to the value of the property sought to be partitioned, over which the claim of the plaintiff has been decreed. In the absence thereof this issue can not be decided. As evidence is necessary to determine this issue parties shall be at liberty to lead such oral or documentary evidence as deemed necessary by the trial court.

9. Therefore, while affirming the decree for partition, we set aside the judgment and decree passed by the courts below directing the defendant to pay to the plaintiff a sum of Rs.3,000/- alongwith interest thereon @ 6% from 18.2.1976 and remit the matter to the trial court to determine the value of share in terms of Section 4 of the Partition Act. Amount so determined will be paid by the defendant to the plaintiff.

10. The appeal is partly allowed in the terms aforesaid.

.....J.
(DR. MUKUNDAKAM SHARMA)

.....J.
(C.K. PRASAD)

NEW DELHI,
MARCH 31, 2010.