

Bejoy Krishna Ghosh Vs. Ashutosh Ghosh and ors.

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Court : Kolkata

Decided On : Apr-08-1908

Reported in : 4Ind.Cas.519

Judge : Francis Maclean, C.J. and ;Doss, J.

Appellant : Bejoy Krishna Ghosh

Respondent : Ashutosh Ghosh and ors.

Judgement :

Francis Maclean, C.J.

1. One Nakur Chandra Ghosh acquired a plot of land with an old house on it which was pulled down and rebuilt with additions. He had three sons, Narain, Ram Narain and Debnarain: and they lived as a joint Hindu family governed by the Dayabhaga System of Law. All the sons are dead and they predeceased their father. It appears that Debnarain found the money to build a new house upon this plot of land in which apparently the family lived for sometime. The present defendants are the representatives of Debnarain. The father, Nakur Chundra Ghosh, by his Will devised the entire house which had been rebuilt by Debnarain, to the son of Ram Narain who is the plaintiff, and is now suing to eject the representatives of Debnarain. There seems to be some question whether the statement as to the effect of the Will by the lower appellate Court is quite accurate, or whether he only devised two rooms in the house: at any rate, the whole of the disputed property was devised. The plaintiff as such devisee now sues to recover possession of that disputed property. The defendants say that the property was joint property and they are entitled to a share of it. The lower appellate Court has held that they are entitled to a two-third share, the Munsif took a different view and gave the plaintiff a decree. I feel a great difficulty in saying that the properties have become joint. The land was separate property of the father: the house on it was built with the money of the son Debnarain but it never became his separate property. It may be that the representatives of the son may have some equitable claim for compensation against the state of the father; but that case is not before us, and I express no opinion upon it. I cannot accept the view of the lower appellate Court that the land and the house have in the circumstances become joint so as to entitle the heirs of the son, Debnarain, to a share of the property.

2. The appeal, therefore, must be allowed, and the decree of the lower appellate Court discharged and that of the Munsif restored with costs.

Doss, J.

3. I agree.

