

(1936) 03 CAL CK 0034

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 2129 of 1933

Hari Charan Bera and Others

APPELLANT

Vs

Fakir Chandra Sao and Others

RESPONDENT

Date of Decision : 17-03-1936

Acts Referred:

Citation : (1936) 03 CAL CK 0034

Final Decision : Allowed

Judgement

M.C. Ghose, J.—This is an appeal by the Defendants in a suit for partition under Act IV of 1893, the Plaintiff being a 2/3rds co-sharer and the Defendant the 1/3rd co-sharer of the property in suit. The property consists of certain lands and a tank. The Commissioner made a partition of the land and found that the tank could not be partitioned and, at the same time, having regard to the mutual ill-feeling of the parties, it was not proper to leave it in joint possession. The Commissioner therefore put it up to auction between the parties and gave it to the Plaintiff, who offered Rs. 1500. The Defendants made objection to the Court and the learned Munsif fixed the value of the tank at Rs. 810 and gave the Defendants the option of purchasing it on payment of the proportionate share of the Plaintiff. Against that decree the Plaintiff appealed and the Court of appeal below has directed that the tank be sold by public auction to the highest bidder and the proceeds be distributed among the parties. Upon hearing the learned Advocates on both sides it appears that the order, of the Court of appeal below is not strictly in accordance with law. Under sec. S (2) when two or more shareholders severally apply for or leave to buy, the Court shall order a sale of the share to that share-holder who offers to pay the highest price, above the valuation made by the Court. The section does not authorise the Court to hold a public auction.

2. The decree of the lower Appellate Court is set aside and in lieu thereof there will be a decree that the upset price of the tank will be fixed at Rs. 810 and an auction will be held at which the co-sharers--Plaintiffs and Defendants-- will bid

against one another and the tank will go to the highest bidder.

3. The Appellants are allowed to with-draw the sum which was deposited in Court and which has not yet been taken by the other party. The Appellants are entitled to their costs in all the Courts.

R.C. Mitter, J.

I agree.