

ITEM NO.26

COURT NO.11

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 9722/2017

(Arising out of impugned final judgment and order dated 28/09/2016 in CWJC No. 17894/2013 passed by the High Court Of Patna)

RAJIV KUMAR AGRAWAL AND ANR

Petitioner(s)

VERSUS

RABINDRA NARAYAN AGRAWAL (d) THRU LRS. & ORS.

Respondent(s)

(with appln. (s) for exemption from filing O.T. and office report)

Date : 24/04/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s) Mr. Amit Pawan, Adv.

For Respondent(s) Ms. Meenakshi Arora, Sr. Adv.
Mr. Rajiv Shankar Dvivedi, Adv.
Mr. S.K. Sarkar, Adv.
Mr. Mrigank Mauli, Adv.
Mr. Mani Bhushan Kumar, Adv.
Mr. Saukat, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal stands disposed of in terms of the
signed order.

(NEELAM GULATI)
COURT MASTER

(TAPAN KR. CHAKRABORTY)
COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s).5597 OF 2017
(Arising out of SLP(C) No. 9722 of 2017)

RAJIV KUMAR AGRAWAL AND ANR. Appellant(s)

VERSUS

RABINDRA NARAYAN AGRAWAL (D)
THRU LRS. & ORS. Respondent(s)

O R D E R

Heard learned counsel for the parties.

Leave granted.

We are of the opinion that since the partition suit is going on and preliminary decree has not been passed and issues have also not been framed so far for the last twenty years. The prayer was made by Ms. Abha Rani, defendant no. 3 (respondent no.2 herein) to dispose of the property in order to meet the expenses for marriage of her unmarried daughter. The property in question was in possession of defendant no.3 herself. In the circumstances, the

trial court has given the permission to sell the property subject to the rider that it would be subject to final decision of the case and the property which is being sold would be liable to be allotted to the share of alienating defendant.

After hearing learned senior counsel for the parties, we are of the opinion that no final opinion should have been expressed by the court at this stage with respect to the allotment of the particular property to be sold, to be allotted to the share of defendant no.3. Obviously, it would depend upon the finding about the share of defendant no.3 in the preliminary decree and also subject to the settlement of the equities between the parties in the final decree proceedings. Thus alienation would be subject to the lis pendens and it would be open to the court to adjust equities between the parties in accordance with law on final decree proceedings accordingly the order of the courts below stands modified and permission is granted to make the alienation subject to aforesaid rider.

It was prayed by learned senior counsel that since the matter is pending for the last twenty years and the parties are family members, we request the trial court to find out the possibility of amicable settlement by making a reference to the mediator and also request to expedite the Trial.

Appeal stands disposed of with the aforesaid observation.

.....J.
(ARUN MISHRA)

.....J.
(AMITAVA ROY)

NEW DELHI;
APRIL 24, 2017