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20.01.
2021

SAT 172 of 2019

**Bankim Behari Mahato
vs
Sri Raj Kumar Mahato & Ors**

**Mr. Jahar Lal Ray,
... For the Appellant.**

The instant appeal shall be heard on the following substantial questions of law :-

1. Whether the Court of appeal below was justified in holding that Section 90 of the Evidence Act is discretionary in nature as it contains a word 'may' and, therefore, presumption of due execution cannot be automatically be raised?
2. Whether the Court of appeal below was justified in discarding the valid sale deed and holding that the title did not pass to the appellant/appellant simply because he has failed to mutate his name in the Record of Rights?
3. Even after recording positive finding that the sale deed (Exhibit 5) relied upon by the plaintiff/appellant is an out and out sale yet he gave credence to the subsequent deed over the earlier deed executed by the original owner?

Let the Lower Court Records be called for through Special Messenger at the cost of the appellant. Such cost shall be put in within a week.

The appellant is directed to put in the postal costs

and requisites namely, postal costs and written up notice forms for effecting service of notice of appeal upon the remaining respondents by speed post within a week from date.

After arrival of the Lower Court's Records, office shall examine the same and shall issue notice of arrival of Lower Court Records under Rule 12 of Chapter 9 of the Appellate Side Rules upon the learned Advocate-on-record for the appellant forthwith.

The appellant is directed to prepare and file eight numbers of requisite informal paper books-printed, typewritten or cyclostyled, as the case may be -out of court, within a period of six weeks from the date of service of notice of arrival of Lower Court Records on the learned Advocate for the appellant.

Liberty is granted to the parties to pray for early disposal of the appeal before the appropriate bench.

(Harish Tandon, J)

(Kausik Chanda , J)