

West Bengal Form No. 3701

HIGH COURT FORM NO. (J) 2.
HEADING OF JUDGEMENT IN ORIGINAL SUIT/CASE
District :: South 24-Parganas.

In the 1st Court of the Civil Judge {Senior Division} at Baruipur.

Present:- Sri. Indranil Chatterjee, Civil Judge (Senior Division),
1st Court, Baruipur.
J.O. Code: WB00827

Tuesday, the 28th day of July, 2026

TITLE SUIT/CASE NO. 335 OF 2019
CIS Reg. No. 335 of 2019
CNR: WBSP0D-000613-2019

Sri Shikharendra Mukherjee

Plaintiff(s)
Petitioner(s)

Versus

Smt. Chaya Mukerhee & Four Others

defendants(s)
Opposite party

(1)Give date or dates This suit/ease comings on for final
hearing on (1) in the presence of

Mr. Sudas Mondal	<u>Advocate(s)</u> for <u>plaintiff(s)</u>
	<u>Pleader(s)</u> <u>Petitioner(s)</u>
Mr. Sumanta Bandhapadhaya	<u>Advocate(s)</u> for <u>defendants(s) no.10</u>
	<u>Pleader(s)</u> <u>Opposite Party</u>

and having stood for consideration to this day, the Court delivered the following Judgement:-

- (a) In this partition suit valued at Rs.90,100/- the plaintiff seeks partition of his 1/4th share of property as mentioned in the schedules of the plaint.
- (b) He also seeks partition of his said share by metes and bounds.
- (c) He seeks separate allotment and permanent injunction against the defendants.
- (d) He further seeks that if the defendants refuse or fail to amicably partition the property as per preliminary decree, within the time frame to be fixed by Court, then a survey passed advocate commissioner be appointed for partitioning the property at the stage of final decree.
- (e) The background facts that motivated the plaintiff to launch this litigation, as couched in his plaint is required to be produced hereunder, to the required extent to understand the stand point of the plaintiff.

➤ **Plaint case:**

- i. The land as described in the schedules of the plaint (in short the suit property) originally belonged to Lalit Mohan Mukhapadhyay, Brojo Mohan Mukhapadhyay, Ananta Mohan Mukhapadhyay, Gopi Mohan Mukhapadhyay, Lal Mohan Mukhapadhyay, Payari Mohan Mukhapadhyay, Raj Mohan Mukhapadhyay and Bijoy Mohan Mukhapadhyay along with other properties.
- ii. The said original owners got their property partitioned by a registered deed of partition no.8776 dated 23.09.1960.
- iii. By the strength of such partition Lal Mohan Mukhapadhyay the fifth party therein got the property demarcated as 'E' and marked by 'Blue' measuring 34 decimals along with all standing timber and easement rights. That property falls under the schedule 'Uma' of the registered deed of partition.
- iv. Said Lal Mohan expired leaving behind Birendra Kumar Mukhapadhyay (original defendant no.1), Narendra Kumar Mukhapadhyay (original and current defendant no.2), Rabindra Kumar Mukhapadhyay (deceased father of plaintiff), Kalyani Banerjee (current and original defendant no.3).

- v. These persons inherited the property of the said Lal Mohan.
- vi. Rabindra Kumar Mukhapadhyay died leaving behind the plaintiff as sole owner.
- vii. The property in suit is claimed to be not partitioned as per law.
- viii. Things were peaceful until some time proximate to the filing of the suit, when the defendants unleashed ungodly acts on the suit property.
- ix. It is asserted by the plaintiff that the defendants were approached for partition of the schedules property but they did not lend any ear to such request.
- x. So the plaintiff preferred to present the instant plaint with such prayers as stated above.

Written statement was filed by defendants no.1Ka,1Kha, 2 and 3. It is now the time to see what they have to say in their defence:

Case of the defendants no.1Ka,1Kha, 2 and 3:

- a) They have challenged the suit on all possible technical grounds.
- b) By practically admitting the inheritance chain proposed by the plaintiff these defendants have only put the plaintiff to prove the points which are matters of record.
- c) These defendants did not put up any positive case to claim that they or the plaintiff did not inherit any property from their common predecessor in interest by the mode projected by the plaintiff. Only the claim of share and possession of plaintiff has been challenged.
- d) The defendants mentioned about another property situated at Shyambazar and asserted that the suit cannot be decreed as all the properties left by Lal Mohan has not been brought in the hotchpotch of the suit.
- e) During the course of argument it was pointed out that the mother of the plaintiff has not been made a party to the suit. It was also added that the schedules only mentioned the land but does not include the structures thereupon for which the schedule cannot be acted upon.

- f) Finally, it was stated that there is no similarity of the schedules as in the plaint and the registered deed of partition, which was again claimed to be not acted upon.

In view of the pleadings, the following issues were framed by this Court:

ISSUES

- i. Is the suit maintainable in its present form and law?
- ii. Is there any cause of action to file the suit?
- iii. Is the suit barred by the law of limitation or any other provisions or principles of law?
- iv. Whether the schedule of the plaint is vague, indefinite or such on which no decree can be passed?
- v. Whether all the eligible properties and eligible parties have been brought in the hotchpotch of the suit? If not, whether that is fatal to the suit?
- vi. Whether the property in suit was subjected to previous partition?
- vii. Whether the plaintiff has any sort of right, title and/or interest and possession over the suit property? If so then to what extent?
- viii. Whether the plaintiff is entitled to preliminary decree followed by final decree of partition in respect of his claimed share in the schedule land as laid down and prayed in the plaint?
- ix. Is the plaintiff entitled to get the decree as prayed for by him?
- x. To what other relief, if any, is the plaintiff entitled to under law and equity?

In order to drive home the issues, the plaintiff (Shikharendra Mukherjee) examined himself as PW-1. This PW-1 exhibited the following documents:-

- (a) The certified copy of Deed No. 8776 of the year 1960 was marked as exhibit-1.
- (b) The plot information of Plot No. 453, 454 and 437 were marked as exhibit-2 with objection.

The PW-1 was cross-examined by the contesting defendants in full.

The contesting defendants examined Atanu Mukherjee being the defendant no.1Ka as DW-1. He did not exhibit any document while deposing for himself and defendants no.1Kha and 2. Thereafter, the defendant no.1Ga Mahua Kanjilal was examined as DW-2 for herself. She also did not exhibit any document.

This witnesses were cross-examined to the required extent.

Now, it is the time to address the issues one after the other, in compliance of provision of Order XIV of the Code of Civil Procedure.

DECISION WITH REASONS

➤ **ISSUES No. 1 to 3:-**

- 1) These three issues are taken up together in order to avoid repetitions.
- 2) So far as these three issues under this heading are concerned none hit these points at all. There is no evidence from the side of the defendants as well on this score to call the Suit as bad.
- 3) No doubt that there is no document to show that they approached the defendants for partition. But that in itself cannot be construed to be 'lack of cause of action' more so when there is no specific and cognizable challenge and substantive evidence in this regard in the suit.
- 4) Therefore, these three issues are decided in favour of the plaintiff.

➤ **ISSUE No.4:-**

- 1) It was mentioned at the time of argument that the schedules mentioned in the deed of partition of 1996 being exhibit-1 do not match with the two schedules of the plaint.
- 2) While investigating into such claim this Court finds from the exhibit-1 that the predecessor-in-interest of the parties to the suit that is Lal

Mohan, got the property in schedule 'Uma' of the exhibit-1 by proper and distinguishable demarcation. A comparison of the same with the presented schedules of the plaint satisfies the Court that not only the schedules have been properly drafted but also fact remains under the given circumstances and light of the mother partition deed, the current schedules appear to be executable and workable.

- 3) To negate that argument one may refer to the cross-examination of the DW-1 dated 17.04.2025 (point no.11) wherein the said witness blatantly admitted that this suit is in relation to that schedule 'Uma' property mentioned in the exhibit-1.
- 4) The point no.12 of the same cross-examination further elaborates that by the strength of the said exhibit-1 the current parties are possessing the property. Therefore, it shall be wrong to hold that the deed of 1960 that is exhibit-1 was not acted upon as per the statement of the DW-1 or that the plaintiff has no possession over the suit property.
- 5) The finding of possession in favour of plaintiff gets further strength from the statement of DW-2 in her cross-examination dated 18.01.2026 (point no.10) wherein she has admitted that her statement in her pleadings and written statement that the plaintiff does not have right, title, interest or possession in respect of the suit property is not fully correct. That means the defendants have admitted the possession of the plaintiff for which he is relieved from strict proof thereof.
- 6) In view of such finding of the Court, this issue is decided in favour of the plaintiff and is thus disposed of.

➤ **ISSUE No. 5:-**

- (1) The contesting defendants appeared to be most interested in defeating the suit on the ground of nonjoinder of necessary party and for not bringing all properties of Lal Mohan in this suit.
- (2) So far as nonjoinder factor is concerned it was argued that the mother of the plaintiff has not been made party to the suit.

- (3) At the first place the defendants were not absolutely specific in their pleadings and evidence and as such it appears that this idea dawned upon them at the dusk stage of the suit.
- (4) Be that as it may, the PW-1 in his cross-examination dated 19.09.2024 (Point no.11) was made to say that he is the only legal heir of Rabindra one of the sons of Lal Mohan.
- (5) There is no denial suggested to such claim.
- (6) The defendants never made any attempt to draw the attention of the PW-1 regarding missing out of any co-sharer from this suit. Rather, the PW-1 was repeatedly made to say the percolation of the rights unto the parties to the suit in the fashion as projected by the contesting defendants.
- (7) For that, this Court does not find that non-inclusion of the mother of the plaintiff, if alive, is fatal to the suit.
- (8) So far as left out property factor is concerned both the sides hinted about a property of Lal Mohan at Shyambazar.
- (9) Interesting enough neither of the parties could give out any details or indications of location of the property. Understandably the property of Shyambazar falls under the Calcutta Municipal Corporation. So, definitely each property is individually numbered. That is to say the parties were not required to remember cumbersome plot numbers, khatian numbers, J.L. numbers etc. to identify the property.
- (10) In short, had there been any specific property of the said Late Lal Mohan then at least the defendants who are the direct descendants of Lal Mohan should have shown the Court about the details of the said property at Shyambazar.
- (11) No doubt inclusion of all properties where there exists unity of ownership in a suit for partition. However, that 'all properties' should be known and identified properties. When in a suit like this parties sketchily speak about a property of the original owner but fails to give out details thereof then as per this Court the non-inclusion of such

unidentified property cannot hit the root of the suit. It is also notable that after Lal Mohan the defendants are the first generation to inherit the property of Lal Mohan. On the other hand, the plaintiff is the second generation share holder. So, the best knowledge of the properties of Lal Mohan should be with the direct descendants / some of the defendants. Now, when the direct descendants / some of the defendants have no specific knowledge about the property of Lal Mohan at Shyambazar and that too no hint is there that the property was with Lal Mohan when he breathed his last, this Court thinks that it should not call the suit as bad basing on such presumptive defence.

(12) In short, when there is no direct evidence of deliberate exclusion of property from the hotchpotch of the suit, then the suit for partition cannot be called as one where a positive decree cannot be passed.

(13) The issue is accordingly disposed of in favour of the plaintiff.

➤ **ISSUES No.6 to 10:-**

- 1) These five issues are brought under the same umbrella so as to make the discussion crisp yet not cryptic.
- 2) As narrated earlier all started from getting of the 'Uma' schedule property through the deed of partition of 1960 by Lal Mohan, in a very definitively demarcated manner.
- 3) The DW-1 in argument and written statement tried to indicate that the deed was not acted upon. However, while facing cross-examination at various places he has admitted about receipt of such land by Lal Mohan and that is the suit property, moreover, he also specifically stated that he has no objection in terms with the arrangement made by his grandfather.
- 4) To be further specific at point no.12 of his cross-examination dated 17.04.2025 he has admitted that Lal Mohan executed a partition deed (which was exhibited as Exhibit-1 without objection) and by the strength of which the parties are possessing the suit property.

- 5) Having such evidence in hand the defence on this score appears to be planted in quick sand and the defence appears to be more inoperative than the defendants think the deed to be.
- 6) Another answerable defence is the non-mention of the structures standing on the suit property in the schedule of the plaint.
- 7) Though the expression immovable property is not defined in the Transfer of Property Act 1881 (in short the T.P. Act), one has to look for its definition in the General Clauses Act as held in **Mati Lal Vs. Iswar as reported in AIR 1936 Calcutta 727** and in **(2001) 10 SCC 221** and in **(2003) 3 ICC 162 (SC)**.
- 8) Section 3(26) of the General Clauses Act defines immovable property in an inclusive manner to be benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.
- 9) Section 2(6) of the Registration Act (XVI of 1908) recognizes land, buildings, right to ways or any other benefits arising out of land etc. to be immovable property.
- 10) Finally, the maxim ***quicquid plantatur solo, solo cedit*** also comes into play to ward off the defence. The maxim says whatever is planted on the soil belongs to the soil.
- 11) Having said so, the absence of mention of the buildings standing upon the soil cannot be said to be a defect in description of the property as since the building is a part of the land so the description of the land is enough. That apart, in this partition suit, upon its success, the respective allotment will be made by expert to be appointed by Court, if not amicably done, who will take care of the facts of existing possession qua the amount of share of each party to be determined by this Court.
- 12) The conglomerated result is that the suit is found to have survived by scaling the wall of defence raised by the defendants.
- 13) So far as the quantum of share and existence of co-ownership is concerned, the record is squirming with admitted evidence from both

sides that not only they are co-sharers with each other in respect of the suit property but also the plaintiff is entitled to 1/4th share in the suit property. Whereas, defendant no.2 and 4 are entitled to 1/4th share each and the three legal heirs of original defendant Birendra being defendants no.1Ka, 1Kha and 1Ga are entitled to 1/12th share each in the property described in the schedules of the plaint.

14) Before parting it will not be out of place to mention that while facing cross-examination both the testifiers from the side of the defendants have expressed their interest to split up the property as per share and possession.

15) For that, this Court finds no reason to delve into further materials just for the sake of adding to the length of the Judgment. In other words, as all the disputed points have been addressed as above, this Court does not find any cogent reason to point out each and every admission from evidence of both sides which too favours the maker and the adversary.

(14) Therefore, this suit cannot be called to be sick under these headings for which the same are decided in favour of the plaintiff marking disposal of all issues in the suit.

In sum, the suit succeeds.

✓ Court Fees correctly paid.

✓ Accordingly, it is

ORDERED

That the Title Suit be and the same is hereby **preliminarily decreed on contest**, as against the defendants no.1Ka, 1Kha, 2 and 3 of the suit and ex parte against defendant no.1Ga of the suit.

There shall be no Order as to costs.

The plaintiff is found to be entitled to 1/4th share of land, which land is described in the schedules of the plaint. His share to that extent is hereby declared.

The defendants no.1Ka,1Kha and 1Ga are found entitled to 1/12th share each and their respective shares to such extent is hereby declared.

The defendants no.2 and 3 are found to be entitled to 1/4th share each and their respective shares to such extent is hereby declared.

The plaintiff does get a decree for partition of his above declared 1/4th share of land in suit, as detailed in the schedules of the plaint, by metes and bounds.

The plaintiff and/or the defendants hereto are allowed three months time from this date for effecting such partition amicably, in default, the plaintiff and/or the defendants shall be at liberty to apply to the Court for such partition being effected through a Survey Knowing Commissioner, otherwise the Court shall launch the Final Decree Proceedings *suo motu*.

The Commissioner shall, while effecting the partition, have due regards to the existing possession of the parties, advantage of the vacant place attributable to all as per share and other equitable principles.

The suit is thus disposed of.

Preliminary Decree be drawn up and noting be made accordingly.

Note in the C.I.S. Upload the judgment.

Put up record **22.01.2027** for suo motu drawing up of final decree if the parties fail to amicably partition the properties as directed with the time frame.

Dictated & Corrected by me.

Sd/-
Civil Judge (Senior Division),
1st Court, Baruipur

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Civil Judge (Senior Division),
1st Court, Baruipur.