

HIGH COURT FORM NO.(J) 2

HEADING OF JUDGEMENT IN ORIGINAL SUIT/CASE

District: - Purba Medinipur

In the Court of the Civil Judge (Junior Division)
1st Addl. Court, Contai, Purba Medinipur

Present: - Mrs. Soma Das, Civil Judge (Junior Division)
1st Addl. Court, Contai, Purba Medinipur

Friday, the 4th day of April, 2025

T.S. Case No. 100 of 2023

CIS No. 314 of 2023

CNR No. WBEMOB 0005072023

Sri Nabarun Roy Plaintiff (s)

-Versus-

Sri Debasish Das and others
Defendants(s)

This suit/case coming on for final hearing on (1) 04.04.2025 and
in presence of:

Sri Santanu Hota, Advocate(s) for Plaintiff (s)

Plaintiffs(s)

Sri Ashis Roy, Advocate(s) for Defendant(s)

Pleader(s) Defendants

This is a suit for declaration and permanent injunction valued at
Rs. 100/-.

FACTS IN BRIEF

The crux of the Plaintiffs' case is that in dag No. 474 of Mouja Kasharia is 45 decimals. The said property previously Rayati property of Kallal Mondal, Hindol Dol Mondal and Hilloltol Mondal and accordingly, LRROR has been record in their names. While they have been inpossession of dag No. 474, transferred transferred eastern 29 decimals out of 45 decimal on 02.01.2008 to defendant No. 1 and 2 vide Sale deed no. 29 of 2008. The plaintiff became owner of Ka suit land vide sale deed 4772 of 2022 dated 17.08.2018 executed by Hindol Dol Mondal and Hilloltol Mondal and Sale deed 2729 dated 26.04.2022 executed by Hindol dol Mondal. The plaintiff has been in possession of Ka schedule property with proper demarcation. The plaintiff has constructed shop room over portion of Ka schedule property, namely, 'Royal Online Digital Seba' and it is a xerox shop room. The plaintiff runs his business from the said shop room with commercial electricity meter and proper permission. The defendants' property is situated adjacent eastern side of suit plot No. 474. The plaintiff has his property in the north western portion in suit dag and in his southern side the proforma defendants' property. Non-suit plot No. 473 is adjacent northern plot and there is a government road through plot No. 473. The defendants have no right, title, interest and possession over Ka schedule property even then they are trying to dispossess the plaintiff from Ka schedule property and tried to close plaintiff's shop room and tried to make construction on the eastern portion of Ka schedule property. On protest the plaintiff was threatened by the defendants. The cause of action arose on 20.08.2023 when the defendants threatened the plaintiff and create cloud on plaintiff's title by claiming themselves as owner of Ka schedule property. Hence, this suit.

The plaintiff sought for declaration that the plaintiff has joint title with the proforma defendants to the extent of his KA suit land

and is in ejmal possession of Ka schedule property with proforma defendants, further declaration that the principal defendants have no right, title, interest over Ka schedule property, permanent injunction restraining the principal defendants from creating any disturbance in the peaceful ejmal possession of the plaintiff over Ka schedule property and from changing the nature and character of Ka schedule property and from forceful dispossession of the plaintiff from suit shop room, cost and other relief as per equity.

The defendant No.1 and 2 contesting the present suit by filing written statement denying the material contents of the plaint and stating inter alia that total area of suit plot No. 474 is 45 decimal and non- suit plot No. 473 is 3 decimals. Suit plot and non-suit plot both previously belonged to Kallal Mondal, Hilloldol Mondal. They transferred entire non suit plot 473 and eastern 29 decimal property out of 45 decimals to the defendant No. 1 and 2 vide registered sale deed being No. 29 of 2008. Accordingly, the LRROR has been recorded in the name of defendant No. 1 and 2. The defendants made a godown room over non suit plot No. 473. While Kallal Mondal, Hindol Dol Mondal and Hilloltol Mondal had been in possession of western 16 decimals, two of them Hindol Dol Mondal and Hilloltol Mondal executed sale deed 4762 of 2018 and Hindol Dol Mondal alone executed a sale deed 2729 of 2018 to plaintiff and transferred 4.440 decimals + 3.144 decimals of suit plot 474. The plaintiff does not purchase any property of non-suit plot 473. The plaintiff has instituted a false case under section 144 (2) of CrPC. during pendency of this suit and the same has been stayed by dint of order of Ld. ADJ, Contai. The plaintiff has no show room over suit plot 474 nor there is any construction of plaintiff over suit plot 474. As owners did not partition the property o suit dag 474 among them, thus, the plaintiff cannot get any specified area of suit plot 474. The plaintiff's prayer and the KA suit land is contradictory and thus he is not entitled to get the decree as prayed for.

The suit runs ex-parte against Proforma defendant no. 3 and 4.

On perusal of the pleadings of the parties the following issues were framed by this Court.

I S S U E S

1. Is the suit is maintainable in its present form and law?
2. Is the suit barred by Section 34 of the Specific Relief Act?
3. Is the suit bad for non-joinder of necessary party?
4. Has the plaintiff any cause of action to file the instant suit?
5. Is the plaintiff absolute owner of Ka scheduled property?
6. Is the plaintiff entitled to get the decree as prayed for?
7. To what other relief or reliefs the plaintiff are entitled?

-: Document exhibited on behalf of the plaintiff: -

Exhibits	Description
Exhibit- 1 (Series)	Net copy of information of plot No. 474 of Mouja Kasharia
Exhibit 2	Original registered sale deed being No. 2729 of 2022
Exhibit 3	Original registered sale deed being No. 4762 of 2018
Exhibit 4 (Objected to)	Certified copy of information of non-suit plot No. 473 of Mouja Kasharia
Exhibit 5 (Series) Objected to	Original electricity bill (Not legible) of consumer ID No. 203712514 with payment receipt dated 19.11.2023
Exhibit 6 (Objected to)	Net certified copy of Trade License dated 05.01.2023
Exhibit 7 collectively	Local inspection report dated 06.10.2023

-: Document exhibited on behalf of the defendant: -

Exhibits	Description
Exhibit- A	Original registered sale deed being No. 29 of 2008
Exhibit-B	LRROR being No. 2176

Exhibit-C	LRROR of defendant No. 1 being No. 2177
Exhibit-D (Series)	Net copy of plot information of LR plot No. 474 and 473 of suit Mouja.

- : W I T N E S S E S E X A M I N E D : -

P.W.1- Sri Nabarun Roy

P.W.2- Sri Krishnendu Maity

D.W.1- Sri Snehasish Das

DECISION WITH REASONS

Issue Nos. 1 ,2 and 4 :

All these issues are taken up together for the sake of brief and concise discussion and also for the reason that all these issues are co-related to each other.

These issues are not at all agitated by the parties. Nevertheless, I have gone through the evidence adduced by the plaintiffs and the materials available on record and find nothing to hold that the instant suit is not maintainable in its present form and in law or barred by section 34 of the Specific Relief Act or the plaintiff has no cause of action to file the present suit.

Thus, all these issues are decided in favour of the plaintiffs.

Issue Nos. 3, 5 to 7:

These issues are taken up together to avoid repetition and for convenience.

Before going in details, it would be relevant enough to narrate distinguishably the facts asserted by both sides in their pleadings. On verifying the plaint as well as Written statement it is found that the parties are not in dispute that suit plot 474 measuring 45 decimals and belonged to Kallol Mondal, Hillol Dol Mondal and Hilloltol Mondal. It is not disputed that Kallol Mondal, Hillol Dol Mondal and Hilloltol Mondal jointly transferred eastern 29 decimals to defendant

no. 1 & 2 vide sale deed 29 of 2008. Whereas the plaintiff purchased property of suit plot 474 vide two sale deeds. One is executed by two of them and another is one of them. Remaining part belongs to the owners.

The plaintiff claimed that the principal defendants no. 1 and 2 are not co-sharer of suit plot 474. The plaintiff purchased Ka suit land and is in ejmal possession of suit dag to the extent of his Ka suit land.

The defendants stated that the plaintiff in one hand claimed ejmal ownership with proformas, on the other hand specify his purchased land with demarcation. According to defendants, the plaintiff purchased 4.440 decimals + 3.144 decimals = 7.554 decimals in suit dag 474. The plaintiff has no shop room or construction over suit dag. He has no title over non suit dag 473 and defendants are exclusive owner of non-suit plot 473.

From the pleading of the parties it appears that admittedly Kallol Mondal, Hillol Dol Mondal and Hilloltol Mondal were joint owners of suit plot 474 measuring 45 decimals. They first sold out the portion of the suit plot with proper demarcation to defendant no. 1 & 2. The Defendants filed their purchased deed 29 of 2008 (Exhibit A) and it derives from exhibit A that Kallol Mondal, Hillol Dol Mondal and Hilloltol Mondal jointly sold out demarcated eastern 29 decimals of suit plot 474 with specific demarcation and entire 3 decimals of non-suit plot 473 to the defendant no. 1 & 2.

In *Sk. Samser Ali Vs. Serina Bibi, reported in 2012(2) CHN 694*, it is held that “if a well demarcated portion is sold by the original owner of a plot of land, the purchaser does not became the co- sharer with the original owner ”.

In *Arindam Joardar vs. Tarun Raha and others* reported in (2016) 3 Cal. CHN 61 where the case was that a common owner had transferred the specific portions out of the entire plot with defined areas and boundaries to different purchasers on different dates mentioning his proportionate share with reference to the entire jama.

It was in the context of a fact that original owner had gifted to his three sons exclusive demarcated property and held that none of them can claim to be a co- sharer of the other; otherwise the deed of gift fails.

Therefore, the defendant no.1 and 2 are not at all co-sharer of suit dah 474. But, plaintiff's purchased deed 2729 of 2022 marked exhibit 2 and Sale deed 4762 of 2018 marked exhibit 3. It derives from Exhibit 2 & 3 that while Kallol Mondal, Hillol Dol Mondal and Hilloltol Mondal had been in joint possession of (45-eastern 29) = western 16 decimals in suit dag 474, two of them Hindol Dol Mondal & Hillol Tol Mondal sold out demarcated north west 4.440 decimals of suit dag 474 And Hillol Tol Mondal sold out demarcated southern 3.114 decimals out of north western 7.554 out of 45 decimals. So, the plaintiff purchased north west 7.554 decimals of suit plot 474 vide exhibit 2 & 3.

It is pertinent to mention that as some of the owners without partition transferred property of suit dag 474 to the plaintiff, thus the plaintiff became co-sharer of suit plot, though his vendors sold out demarcated portion of suit dag.

It is also plaintiff's claim that he is one of the co-sharer and is in ejmal possession of his purchased land with proforma defendants who have rest share in suit dag 474.

The plaintiff claims that he is in ejmal possession of the ka suit land and has constructed a shop room and runs his business therefrom. There is no dispute in between him and the remaining co-sharer of suit dag 474. The defendants creates disturbance in the peaceful possession of the plaintiff and creating disturbance in peaceful running of his shop from Ka suit land.

The DW1 admitted that the plaintiff has xerox shop room namely 'Digital Seva'. He stated that he do not know the area purchased by the plaintiff. HE has no house over suit plot.

The PW1 during evidence has stated that the defendants re occupying his 3 -3.5 decimals in suit plot 474 since 2002 and

admitted that he did not file any suit for recovery of possession. He has stated that the property of suit plot 474 was partitioned among three brothers prior to his purchase. But no such document comes before the Court. If the plaintiff and three brothers are joint owners of remaining portion of suit dag after sold out to defendant no.1 & 2 i.e, remaining western 16 decimals, how come the plaintiff claims that the defendants are occupying his 3 decimals or 3.5 decimals.

The plaintiff described Ka scheduled land as well demarcated portion of suit dag 474 but sought for declaration that he is absolute owner of KA suit land and has ejmal ownership with the proforma. So, the prayer in itself is contradictory. From the plaintiff's contention and document it is very clear to this Court he is one of the co-sharer to the extent of 7. 554 decimals out of remaining western 16 decimals out of 45 decimals of suit dag 474. So, he cannot claim his absolute ownership over Ka suit land which is well demarcated portion of the suit dag.

Section 2 (6) of the West Bengal Land Reforms Act and submitted that co-sharer of a raiyat in a plot of land means a person, other than the raiyat who has undemarcated interest in the plot of land along with the raiyat.

The 'Ka' scheduled property is well demarcated portion of a plot of land, it cannot be said that the petitioner has any undemarcated interest in respect of the suit plot. As such, the petitioner does not qualify as a co-sharer in respect of the suit plot in respect of his suit land. But according to him he is co-sharer of suit plot and his document shows that he is co-sharer of suit plot having 7. 554 decimals share.

Plaintiff filed his trade license (exhibit 6) which shows that the shop 'Computer and Xerox Centre CSP Centre' located in suit plot 747 and the proprietor is plaintiff.

The Commission report marked exhibit 7 collectively and as per report shop room is situated portion of suit dag as well as non suit dag. There is nothing in the report which justify that the shop room

(Xerox shop room) is located over the Ka suit land. Even as per report part of Kasaria High School is located over western portion in suit dag 474.

In view of above discussion, this Court comes to the finding that the plaintiff though have ejmal 7.554 decimals out of western 16 decimals of suit dag 474, but he is not an absolute owner of Ka scheduled land which is well demarcated portion of suit dag. His possession cab be an ejmal possession but his title cannot be an ejmal title over the Ka suit land which is well demarcated portions of an unpartitioned property. Though the defendant no. 1 and 2 has no right, title, interest and possession over the KA suit land, but as the plaintiff's prayer and suit land is contradictory , thus the plaintiff is not entitled to get the decree of permanent injunction in respect of KA suit land.

Thus, the plaintiff is not entitled to get the decree as prayed for.

As a result, though issue no. 3 is decided in favour of the plaintiff but issue no. 5 to 7 are decided against the plaintiff.

The instant suit fails.

Court fee paid is correct.

Hence, it is,

O R D E R E D

that the instant suit bearing number T.S.100 of 2023 be and the same is hereby dismissed on contest in respect of defendant no. 1 and 2 and ex-parte in respect of defendant no. 3 and 4, without any order as to costs.

The suit is thus disposed of.

Interim order, if any stands vacated.

Note in relevant register and CIS.

D/C by me,

Sd/-

(Soma Das)

Civil Judge (Jr. Div.), 1st Addl.Court,
Contai, Purba Medinipur.