

MS 23/2024

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West Bengal Form No. 37

HIGH COURT FORM No. [J]2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

DISTRICT: PURBA BARDHAMAN

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION),

KALNA, PURBA BARDHAMAN

PRESENT: SHARMISTHA GHOSH

CIVIL JUDGE (SR.DIVN.),KALNA



Judgment delivered on the 24th day of July, 2026

MONEY SUIT NO. 23 OF 2024

C.N.R No – WBBD130001622024

Utpal Basu Mallik & 3 Ors.Plaintiffs

VERSUS

Deb Kumar Karfa @ Debu Karfa & 1 Anr.....Defendants

This suit-case coming on for final hearing on: 03.07.2026 in presence of

Mr. Md. Asgar Ali Mondal

Ld. Advocate for Plaintiffs

AND

Mr. Dhruva Jyoti Chandra

Ld. Advocate for Defendants

having stood for consideration to this day the Court delivered the following judgment.

This is a suit for claim of 1080 kilogram fish and/or alternative money of the price of the said fish valued at Rs. 1,08,000/- (Rupees One Lakh Eight Thousand only).

CASE OF THE PLAINTIFFS

The plaintiffs' case in brief is that one Rananjit Basu Mallik, since deceased, that is the predecessor in interest of the plaintiffs, was the owner in respect of land measuring 1.17 acre out of total land measuring 3.12 acre of a tank, more fully described in schedule A of

the plaint. That upon demise of the said Ranajit Basu Mallik, his left out property devolved upon her legal heirs i.e. the plaintiffs of this suit and after such inheritance, the plaintiffs recorded their names in the settlement record. That the plaintiff no.1 on 1st Shraban 1422 BS along with other co-sharers including the defendants of the A schedule property entered into a licence agreement with the pro-defendant for a period of 3 years commencing on and from 1st Shraban 1422 BS and valid upto 31st Ashar 1425 BS corresponding to 2015-2016 to 2018-2019 to carry on a business of pisciculture on the terms and conditions mentioned in the said agreement over the A schedule property. That since pro-defendant failed to comply the requisition of the said agreement, the defendants took over the liability and responsibility of the pro-defendant. That in the month of July 2016, the defendant took sum of Rs.4800/- for maintenance and other expenses related to the pisciculture business in the said tank of the plaintiffs. That the co-owners including the defendants also paid their respective contribution and the defendants assured to meet up the fish every year and accordingly, the defendants delivered 180 Kgs. fishes to the plaintiffs for the year 2017 against valid receipt. That thereafter on several occasions, the defendants inspite of giving assurances to the plaintiffs to meet up their share of pisciculture, they did not bother to keeo that promise. On 09.05.2023 when the plaintiffs asked the defendants to pay the proportionate share for the period of six years, the defendants refused to give the same. The defendants have deliberately failed to discharge their promise and therefore they are entitled to pay Rs.1,08,000/- to the plaintiffs. That the plaintiffs issued a demand notice through their Ld. Advocate requesting the defendants clear up the plaintiffs' share of fish in such pisciculture business but despite receiving the same, the defendants neglected to either give the share of fish or to pay the equivalent money to the plaintiffs. This has prompted the plaintiffs to institute this suit seeking relief.

The plaintiffs have prayed for:-

- a) Decree for money of the amount of Rs.1,08,000/- (Rupees One Lakh Eight Thousand) only payable to the plaintiffs by the defendants as per schedule B of the plaint.

- b) Interest @ Rs. 18 per cent per annum on delayed payment of Rs.1,08,000/- till the date of realization of the said sum.
- c) Cost of the suit in real manner.
- d) Any other relief or reliefs which the plaintiffs are entitled to get under the law and equity.

CASE OF THE DEFENDANTS

None of the defendants appeared to contest the suit and the suit was heard ex parte against all the defendants.

The pro-defendant appeared and has filed written statement supporting the case of the plaintiffs.

ISSUES

This court had framed following issues considering the pleadings of parties:

- 1) Whether the suit is maintainable in its present form and prayer?
- 2) Whether this instant suit is hit by Estoppel, waiver and acquiescence?
- 3) Whether the suit is barred by Section 34 of Specific Relief Act?
- 4) Whether the suit is barred by law of limitation?
- 5) Whether the plaintiff has any cause of action to file this suit?
- 6) Whether there had been any agreement in between the plaintiffs and defendants regarding the pisciculture business?
- 7) Whether the defendants failed to comply with the terms of the agreement?
- 8) Whether the defendants deliberately neglected and failed to deliver share of the fish or equivalent consideration?
- 9) Whether the plaintiffs entitled to get the relief as prayed for?
- 10) To what other relief / reliefs are the plaintiffs entitled?

EVIDENCE ON BEHALF OF THE PLAINTIFF

Utpal Basu Mallik deposed as PW1.

Mithilendra Basu Mallik deposed as PW2.

Nabakumar Kaibartya deposed as PW3.

EXHIBITS

Sl. No.	Documents Exhibited	Exhibit No
1	Deed bearing no. 1558/2012	Exhibit 1
2	Death Certificate of Ranajit Basu Mallick	Exhibit 2
3	Government rent receipts in four sheets	Exhibit 3 collectively
4	Postal receipt	Exhibit 4

EVIDENCE ON BEHALF OF THE PRO-DEFENDANT

Nidhar Bag deposed as DW1.

DECISION WITH REASONS

Now the issues are taken up point wise to adjudicate the actual matter in dispute.

Issues Nos. 1, 2, 3, 4 and 5.

All the issues being interlinked are taken up together for discussion for the sake of brevity and convenience.

Maintainability - The plaintiffs have filed this suit for claim of their shares of fish or equivalent amount of money in respect of the A schedule property. The suit is civil in nature and the way it has been framed is maintainable in law.

Estoppel, waiver and acquiescence – The perusal of case record does not indicate anything that suggest that the suit is barred by estoppel, waiver and acquiescence .

Section 34 of Specific Relief Act – The plaintiffs have filed this suit for recovery of share of fish or equivalent money from the defendants. The plaintiffs have prayed for a decree of money equivalent to the share of fish along with interest. The careful perusal of the entire materials on record do not indicate anything that suggest that the suit barred u/s 34 of the Specific Relief Act.

Period of limitation – The plaintiffs have filed this suit for the recovery of money or share of fish and according to the plaintiffs the cause of action arose on 01.01.2024 and the instant suit was file on 19.06.2024 which shows that the suit was filed well within the period of limitation.

Cause of action – According to the plaintiffs the cause of action of this suit arose on

01.01.2024 when despite receiving notice, the defendants deliberately failed and neglected to pay the sum or the share to the plaintiffs. The averments made by the plaintiffs in their pleadings are sufficient enough to hold that the plaintiffs have cause of action to institute this suit.

All these issues are disposed of in favour of the plaintiffs.

Issues Nos. 7, 8 and 9.

All the issues being interlinked are taken up together for discussion for the sake of brevity and convenience.

The main dispute in this suit hinges upon an agreement that was allegedly entered into between the plaintiffs and other co-sharers of the A schedule property and the pro-defendant. It is also the case of the plaintiffs that since the pro-defendant failed to comply the terms and condition of the said agreement, the defendants took up the liability and the responsibility of the pro-defendant. The plaintiffs examined three witnesses in support of their claim. PW1 is the plaintiff no. 1 of this suit whose affidavit in chief is the replica of the plaint and he has relied upon certain documents marked as Exhibit 1 to 3. PW2 and PW3 are the two independent witnesses who also supported the plaintiffs' version. Since the witnesses were cross examined from the side of Proforma defendant who supported the plaintiffs case, nothing substantial came out from such cross examination. The Ld. Advocate in his written argument has relied upon a judgment reported in (2001)7 Supreme Court Cases 69 (Rajinder Pershad (dead) by LRs vs. Darshana Devi in which the Hon'ble Court held that the law is well settled that where the evidence of a witness is allowed to go unchallenged with regard to any particular point it may safely be accepted as true. The entire plaintiffs' case rests upon an agreement initially entered into between plaintiffs, defendants and pro forma defendants but such agreement was not proved in this suit. Evidence is both ocular and documentary. So when a persons claim is based on certain document that document must come before the Court as it is a substantial piece of evidence. But surprisingly the main document on which the entire plaintiffs' case rests was

never put forth before this Court. The plaintiffs have merely produced the photocopy of the agreement which was not admitted in evidence. It is true that the witnesses were not cross examined by the defendants but that does not mean that their testimonies should be accepted as Gospel Truth.

The law is well settled that plaintiffs must prove their own case and cannot take the advantage of the witness of the defence case. In this case, the plaintiffs have made their claim based on an agreement but such agreement was never produced before this Court. Accordingly this Court has no scope to decide whether there had been any agreement between the plaintiffs and the defendants and the defendants failed to comply the terms of such agreement.

This being the position, it also cannot be decided as to whether the defendants deliberately paid the sum or the equivalent share to the plaintiffs in accordance to the agreement.

All these issues are disposed of against the plaintiffs.

Issues Nos. 10 and 11.

Both the issues being interlinked are taken up together for discussion for the sake of brevity and convenience.

The careful perusal of all the materials on record and having regards to the facts and circumstance of the case, I am of the view that the plaintiffs have failed to establish their case to the satisfaction of this Court and they are not entitled to get any relief as prayed for.

As a result the suit fails.

Court Fee paid is sufficient.

Hence , it is

ORDERED

that the instant suit be and the same is hereby dismissed on contest against pro-defendant and exparte against the defendants but without any order as to costs.

Note in relevant registers.

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Let all original documents be returned to the parties upon proper application and following proper procedure.

Dictated & Corrected by

C.J(S.D), Kalna,
Purba Bardhaman

Sharmistha Ghosh
UID No. WB 01143
Civil Judge(Sr. Divn),
Kalna, Purba Bardhaman