

HEADING OF JUDGEMENT IN ORIGINAL SUIT/CASE

DISTRICT : Malda.

IN THE COURT OF : **Civil Judge, Senior Division,
Chanchal, Malda.**

PRESENT : **Sri Sudipta Sarkar,**
Civil Judge (Sr. Divn.),
Chanchal, Malda.

Dated the 13th day of December, 2024.

PARTITION SUIT / CASE NO.07 of 2018

CNR NO.WBML060000032018

REJESH MANDAL & OTHERS. Plaintiff(s)
Petitioner(s)

Vs.

PRADIP MANDAL & OTHERS. Defendant(s)
Opposite Party(s)

Give date or dates : This suit/case coming on for final hearing on 06.12.24 & 07.12.24 in the presence of

Mr. Khairul Anam Advocate(s) for Plaintiff(s)
Pleader(s) Petitioner(s)

Mr. Md. Mamun Ali Advocate(s) for Defendant(s)
Pleader(s) Opposite Party(s)

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

J U D G E M E N T

This is a suit for partition valued at Rs.1,80,000/- and fixed court fee of Rs.80/- has been paid for partition of the suit property.

THE CASE OF THE PLAINTIFFS IN A SHORT COMPASS :

The suit property measuring an area of 60 decimals comprised in plot no.961, situated at Mouza - Enayetnagore, J.L no.86, under P.S- Chanchal, Dist.-Malda earlier belonged to Sk Gombhor Ali and Tulon Bibi. Tulon Bibi by dint of sale deed no.3981 dated 31.03.1968 and Gombhor Ali by dint of sale deed no.9150 dated 21.12.1963 transferred their property in favour of Buchai Mandal, Srimati Mandal and Kalicharan Mandal and handed over possession of the said property in their favour. Buchai Mandal, while possessing his 20 decimals share in the suit plot, died leaving behind three sons, being Radhapada Mandal, Rajesh Mandal (plaintiff no.1) & Bablu Mandal (plaintiff no.2) and six daughters, being Buri Mandal and plaintiff nos.3-7. Radhapada Mandal, a son of Buchai Mandal, died leaving behind plaintiff no.8 as his wife and four daughters, being plaintiff nos.9-12 as his legal heirs. Buri Mandal, a daughter of Buchai Mandal died leaving behind plaintiff no.13 as husband and a son, being plaintiff no.14 as her legal heirs. Srimati Mandal died leaving behind a son namely Badal Mandal and three daughters, being plaintiff no.15-17 as his legal heirs. Badal Mandal, the son of Srimati Mandal, died leaving behind plaintiff no.18 as his wife, plaintiff nos.19-21 as his three sons and plaintiff nos.22-28 as his seven

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daughters as his legal heirs. On the other hand, Kalicharan Mandal died leaving behind defendant nos.1-3 as three sons and defendant nos.4-6 as three daughters as his legal heirs. In that way all the plaintiffs together have 40 decimals share in the suit plot and the defendants together have 20 decimals share therein and they are possessing the said property in ezmali. The suit property has not yet been partitioned by metes and bounds amongst its co-sharers. Since it has become difficult and inconvenient to enjoy the suit property in ejmali and as the defendants have refused to make partition of the suit property amicably, the plaintiffs filed this suit seeking partition of the suit property.

CASE OF DEFENDANTS IN A NUTSHELL:

Denying almost all the contentions of the plaintiffs, the defendants, *inter-alia*, contended that the suit plot measuring 60 decimals earlier belonged to three brothers namely Buchai Mandal, Srimati Mandal and Kalicharan Mandal, all sons of Haricharan Mandal. Apart from the suit plot the said three brothers had also some ezmali properties in the Jitarpur Mouza. While possessing the said property Buchai Mandal died leaving behind Chiria Bewa as wife, Radhapada Mandal, plaintiff no.1 and 2 as three sons and plaintiff nos.3-7 and Buri Mandal as six daughters. When Buchai Mandal died, apart from his eldest son Radhapada Mandal, his other children were minors. On 12.07.1985, Radhapada Mandal, the eldest son of Buchai Mandal and Chiria Bewa, the wife of Buchai Mandal executed a deed of partition with Kalicharan Mandal and Srimati

Mandal vide partition deed no.8025 and got the suit plot and the other aforesaid joint properties partitioned amongst themselves. By such deed of partition Kalicharan Mandal obtained 56.5 decimals of the present suit plot no.961 and started possessing the same. Said Kalicharan Mandal while owning and possessing the said property died leaving behind his three sons and three daughters, who are the defendants of this suit and the said legal heirs of said Kalicharan Mandal after his demise, have been possessing their inherited property with specific boundary. Likewise, by such deed of partition the legal heirs of Buchai Mandal and Srimati Mandal are owning and possessing the lands of other plots as mentioned in the said deed. The plaintiffs for wrongful gain and out of greed have filed this suit seeking partition only in respect of plot no.961. Since on the basis of the aforesaid deed of partition the defendants are possessing their respective property with specific boundary, the question of possessing the suit plot in ezmal with the plaintiffs does not arise at all. Contending the aforesaid facts, defendants have prayed for dismissal of this suit with cost.

On perusal of the pleadings of both the parties following issues were framed in this suit:

I S S U E S

1. Is the suit maintainable in its present form and in law ?
2. Have the plaintiffs any cause of action to file this suit?
3. Is the suit bad for defect of parties?

4. Have the plaintiffs unity of title and possession over the suit property?
5. Are the plaintiffs entitled to get the decree as prayed for ? &
6. To what other relief or relives, if any, in any other laws and equity are the plaintiffs entitled to get ?

In support of their case plaintiffs have examined only plaintiff no.2 namely Bablu Mondal as P.W.1.

In order to substantiate their case the plaintiffs have exhibited the following documents:

1. Two Land Revenue Receipts dated 08.10.71 and 12.12.72.....**Exbt.1 (collectively),**
2. Original purchase deed no.9150 for the year 1963.....**Exbt.2 &**
3. Original purchase deed no.3981 for the year 1964.....**Exbt.3.**

On the other hand, the defendants in support of their case examined 02 witnesses viz.,

Pradip Mandal..... D.W.-1 &
Narayan MuriariD.W.-2.

In order to substantiate their case defendants have exhibited the following document:

1. LR Khatian no.161**Exbt.A &**
2. The original deed of partition being no.8025 dated 12.07.85.....**Exbt.B (with objection).**

DECISION WITH REASONS

ISSUE NOS.1-3:-

Although defendants in their written statement pleaded that this suit is not maintainable or it is bad for defect of parties, the suit is barred by the principle of waiver, estoppel and acquiescence and the plaintiffs have no cause of action to file the suit, however, they did not adduce any evidence during trial to prove the said contentions. During argument also those points were not pressed specifically and as such there is nothing on record to hold that this partition suit is not maintainable in law or it is bad for defect of parties or this suit is barred by any law or that plaintiffs have no cause of action to file this suit. Accordingly, aforesaid three issues are decided in favour of the plaintiffs.

ISSUE NOS.4-6:-

For the sake of brevity and convenience aforesaid three issues are taken up together for consideration.

In this case the plaintiffs claimed that the predecessors of the plaintiffs and defendants namely Buchai Mandal, Srimati Mandal and Kalicharan Mandal purchased the suit plot measuring an area of 60 decimals from Sk Gombhor Ali and Tulon Bibi. The plaintiffs in support of their case exhibited the two deed of sale being nos.9150 dated 21.12.1963 and 3981 dated 31.03.1964, which have been marked in this case Exhibit.2 and 3 respectively. The aforesaid two deed of sale speak that by such two deeds of sale Buchai Mandal, Srimati Mandal and Kalicharan Mandal purchased 33 decimals and 26.5 decimals i.e.,

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totaling to 59.5 decimals from Sk Gombhir Ali and Tulon Bibi. The defendants in their W.S also did not deny the said fact, rather, admitted that Buchai Mandal, Srimati Mandal and Kalicharan Mandal were the earlier owners of the suit property. Defendant no.1, Pradip Mandal who deposed in this case D.W.1 while facing cross-examination also admitted the said fact. Buchai Mandal, Srimati Mandal and Kalicharan Mandal, all have expired. Buchai Mandal is the predecessor of plaintiff nos.1-14. Srimati Mandal is the predecessor of plaintiff nos.15-28. On the other hand Kalicharan Mandal is the predecessor of defendant nos.1-6. Till this stage there is no dispute or controversy between the parties.

The plaintiffs further contended that the 20 decimals share of Buchai Mandal in the suit plot devolved upon his legal heirs, being plaintiff nos.1-14 and on the other hand 20 decimals share of Srimati Mandal in the suit plot devolved upon plaintiff nos.15-28, being his legal heirs. The plaintiffs also contended that the 20 decimals share of Kalicharan Mandal was inherited by his legal heirs, who are defendant nos.1-6 in this case. The plaintiffs claimed that they are possessing 40 decimals share in the suit plot which they inherited from Buchai Mandal and Srimati Mandal. Very interestingly the defendants introduced a new fact which is alien in the plaint case. The defendants claimed that Chiria Bewa and Radhapada Mandal, the wife and eldest son of deceased Buchai Mandal and the two other co-sharers namely Kalicharan Mandal and Srimati Mandal earlier entered into a deed of partition being no.8025 dated 12.07.1985 by which the suit plot and the other joint properties of

the parties were partitioned and allotted to the parties to such deed and at that time the other legal heirs of Buchai Mandal were minors. The defendants contended that by such deed of partition 56.5 decimals of the suit plot was allotted in favour of Kalicharan Mandal along with other non-suit properties. Defendants contended that after the demise of Kalicharan Mandal they are possessing the suit property with specific boundary and so the question of partition of the said property does not arise.

The aforesaid registered deed of partition, being no.8025 dated 12.07.1985 has been exhibited by the defendants, which has been marked in this case as Exhibit.B.

On careful scrutiny of the said deed of partition it appears that Chiria Bewa and Radhapada Mandal, the wife and son respectively of deceased Buchai Mandal, were together the first party in the said deed and Kalicharan Mandal and Srimati Mandal were the second and third parties respectively. If we carefully scan the said deed of partition it can be found that several ezmali properties of the said parties comprised in plot nos.625/884, 625/742, 625, 370, 961 (suit plot), 960, 342/840 were partitioned through the said deed and allotted to the parties which has been described in the said deed itself. It also appears from the deed that by such partition 56.5 decimals of the suit plot was allotted in favour of the first party along with some other non-suit ezmali property. Bablu Mandal, a son of Lt. Buchai Mandal, who deposed in this case as P.W.1 also while facing cross-examination admitted that apart from the suit plot his predecessors also used to own some other properties comprised in

plot nos.625/884, 625/742, 625, 370 and 960.

P.W.1 while confronting with cross-examination, admitted that his mother, Radhapada Mandal, Kalicharan Mandal and Srimati Mandal executed a registered deed of partition being no.8025 dated 12.07.1985, however, he added that at that time except Radhapada Mandal, the other children of Buchai Mandal were minors and such deed was executed during their minority. The defendants also claimed in the W.S that the said deed of partition was executed by the wife and eldest son of Buchai Mandal namely Radhapada Mandal as one of the parties and at that time the other children of Buchai Mandal were minors.

Thus, it comes to light, being asserted by the defendants and admitted by the plaintiffs, that Chiria Bewa and Radhapada Mandal, the wife and eldest son of deceased Buchai Mandal, executed a deed of partition being no.8025 dated 12.07.1985 jointly with Kalicharan Mandal and Srimati Mandal. The present suit plot and several other ezmali non-suit plots as mentioned in the said deed of partition were the subjects of such partition. At the same time it also comes to light, being asserted by the defendants and admitted by the plaintiffs, that at the time of execution of such deed of partition Buchai Mandal had some other children, being plaintiff nos.1-7 and one Buri Mandal, being the predecessor of plaintiff nos.13 and 14, who were minors.

After carefully scrutinizing the aforesaid deed of partition, being Exhibit.B, it appears that no where in the said deed it has been mentioned that Chiria Bewa and Radhapada Mandal, the wife and eldest son respectively of Buchai Mandal, executed the said deed of partition on

their behalf and also on behalf of the aforesaid minor children of Buchai Mandal. Thus at the time of execution of such partition deed although some minor children of Buchai Mandal, being plaintiff nos.1-7 and Buri Mandal acquired the status of co-sharers of the subject of such partition deed by inheriting their shares from their predecessor Buchai Mandal, however, such deed of partition was executed without making them as parties to such partition. Since the said minor children of Buchai Mandal, being plaintiff nos.1-7 and Buri Mandal were not parties to the partition deed being no.8025 dated 12.07.1985, they are not bound by such deed of partition. In other words, since the aforesaid deed of partition was not executed by all the co-sharers of the ezmali subjects of partition and it was executed by some of them leaving aside some others, it cannot be termed as operative or having the force of law.

Although the deed of partition being no.8025 dated 12.07.1985 has been proved to be inoperative due to the above mentioned reason but it is fact that by such deed of partition the suit plot, which was the joint property of Buchai Mandal, Srimati Mandal and Kalicharan Mandal and their other ezmali non-suit properties inherited from their predecessor were partitioned and allotted to the parties to such deed. On scrutiny of the said deed of partition it transpires that by such partition the wife and eldest son of Buchai Mandal, who happened to be the mother and eldest brother of plaintiff nos. 1-7 and Buri Mandal were allotted 90 decimals of ezmali non-suit plot no.625/884, as described in schedule 'Ka' of the said deed. Kalicharan Mandal, the second party of the said deed, was allotted

‘Kha’ schedule properties as described in the deed which include 56.5 decimals of suit plot no.961 along with some other ezmali non-suit property. Sritmati Mandal, the third party of the said deed, was allotted ‘Ga’ schedule non-suit property.

Plaintiff no.2 Bablu Mandal, who deposed in this case as P.W.1 while facing cross-examination also admitted about the execution of such partition deed and he also stated that as per the said deed of partition the co-sharers started to possess their respective allotted portions. P.W.1 also admitted that by virtue of the said deed of partition Kalicharan Mandal got 56.5 decimals of the suit plot no.961 and he started to possess the same and after his demise his legal heirs, being defendant nos.1-6 are possessing the said allotted portion with specific demarcation. P.W.1 Bablu Mandal, who is one of the sons of Buchai Mandal, also stated during cross-examination that according to the said deed of partition the legal heirs of Buchai Mandal and Srimati Mandal are possessing their respective allotted portions in the other plot included in the said deed of partition. Thus admittedly the legal heirs of Buchai Mandal, being plaintiff nos.1-14 are possessing the ‘Ka’ schedule property as described in the said deed, which is not the suit property of the present case. Admittedly also the legal heirs of Srimati Mandal, being plaintiff nos.15-28 are also possessing their respective allotted share as described in schedule ‘Ga’ of the said deed of partition.

Thus although the aforesaid deed of partition has no force of law but in terms of the said partition the several ezmali properties, which also include the present suit plot, had been divided amongst their

predecessors and presently the plaintiffs and the defendants, being their legal heirs, are possessing their said respective allotted property.

From the cross-examination of P.W.1 it clearly appears that the plaintiffs were well aware about the said deed of partition but suppressing the said fact the plaintiffs filed this suit to reopen partition in respect of suit plot only, which is in fact one of the several ezmali properties of the parties. In fact the present suit plot and the aforesaid other ezmali properties belonged to Buchai Mandal, Kalicharan Mandal and Srimati Mandal, being the predecessors of the plaintiffs and defendants.

If the plaintiffs really intend to get the suit plot partitioned, which was the joint property of said Buchai Mandal, Kalicharan Mandal and Srimati Mandal, they also need to seek partition of all the other joint properties of said Buchai Mandal, Kalicharan Mandal and Srimati Mandal. The plaintiffs have derived gain from the aforesaid deed of partition and they have been possessing the other ezmali properties as per the said deed. The plaintiffs cannot be permitted to seek partition of only the suit plot which, by the said deed of partition, has been allotted to the predecessor of the defendants, suppressing or keeping the Court in dark that they are also possessing some ezmali properties as per the said deed.

It is the settled law that a partition suit must embrace all the joint properties of the parties. The parties to a partition suit must include in the hotchpot all the ezmali properties of the co-sharers. It has been held by the Hon'ble Court in Tarani vs Debendra Lal reported in CWN 1044 and in Parbati vs Ainuddin, reported in ILR 7 CAL 577 that the fundamental

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rule is that a partition suit should embrace all the joint properties of the parties concerned in that suit. Violation of that rule would result in the multiplicity of litigation, which all the parties and Courts must avoid and discourage.

However, in this suit the plaintiffs suppressed that the parties have also other joint properties, which earlier belonged to the predecessors of the plaintiffs and defendants and by so suppressing the plaintiffs have prayed for partition of the suit plot only, which has been admitted by plaintiff no.2 (P.W.1) to be in the possession of the defendants.

In the backdrop of the aforesaid facts and circumstances, I am of the considered view that since the plaintiffs have not included all the joint properties of the parties in the hotchpot of this partition suit, this suit is bad on the ground of seeking part or partial partition and it is liable to be dismissed.

Issue nos.4-6 are thus decided against the plaintiffs.

Court fees paid is correct.

Hence, it is

ORDERED

that the instant suit be and same is dismissed on contest, however, without any order as to costs.

Sheristadar is directed to note about this dismissal on the relevant trial register.

Dictated and corrected by me.

Civil Judge (Sr. Divn.),
Chanchal, Dist.-Malda.

(Sudipta Sarkar)
(WB01089)
Civil Judge (Sr. Divn.),
Chanchal, Dist.-Malda.