



West Bengal Form No. 3702

HIGH COURT FORM NO. (J) 2

HEADING OF JUDGEMENT IN TITLE SUIT

DISTRICT: BANKURA

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

Present: Sri. Tanumoy Karmakar,
Civil Judge (Senior Division),
Bishnupur, Bankura

Title Suit No. 26 of 2020

CIS No. 26 of 2020

CNR No. WBBK07-000099-2020

Smt. Rekha Mondal Ghosh & Ors. ... Plaintiffs

-Versus-

Shri. Ashoke Kr. Ghosh ... Defendant

Satyanarayan Bandopadhyay

Asit Bandopadhyay ... Proforma Defendants

*This suit coming on this day or having been
heard on 05-12-2024 and in the presence of*

Shri P.R. Ghosh
Shri Satwik Kr. Ghosh

Advocate(s) for Plaintiff(s)
Pleader(s)

and

Shri.Monodipta Chowdhury

Advocate for the Defendants
Pleader (s)

*And having stood for consideration to this **23rd Day of December, 2024** the Court delivered the following Judgment.*

J U D G E M E N T

This is the suit for Partition and for Permanent Injunction

The fact of the suit is as follows: -

1. The case of plaintiff is nutshell is that the 'Ka' schedule property measuring 0.062 acre in R.S. plot no.14015 described in the schedule of the plaint was belonged to Ramkinkar Bandopadhyay, Harimohan Bandopadhyay, Monmohan Bandhopadhyay, Brijamohan Bandhopadhyay, all being the sons of Karalicharan Bandhopadhyay as well as Bholanath Bandhopadhyay, Baidyanath Bandhopadhyay and Ganendranath Bandhopadhyay, all being the sons of Narendranath Bandhopadhyay. It has been further alleged that while the above stated persons owing and possessing the 'Ka' schedule property, they jointly executed one registered sale deed being No. 1304 of 1963 transferring the butted and bounded 'Ka' schedule property in favour of Madhurirani Ghosh, wife of Hiralal Ghosh. Thereafter, said Madhurirani Ghosh had transferred the 'Ka' schedule property butted and bounded measuring area 0.062 acre with unfinished mud-built house in favour of Ranu Bose, wife of Aditya Kumar Bose by virtue of registered sale deed being no.6348/1974

dated 21-10-1974. It has been more alleged that said Rnau Bose transferred said 'Ka' schedule property with one-storied pucca residential building by virtue of registered deed of sale being no.3709/1981 dated 21-09-1981 in favour of predecessors of these plaintiffs, namely, Santimoy Ghosh, son of Late Prabir Chandra Ghosh and defendant no.1, namely, Ashok Kr. Ghosh. Thereafter, said Santimoy Ghosh and defendant no.1 Ashok Kr. Ghosh have recorded their names in separate L.R. khatian No. 23318, measuring an area of 0.031 acre in L.R. plot No. 9105 and L.R. khatian No. 23319, measuring area of 0.031 acre in L.R. plot No.9105 respectively.

2. It has been stated in the plaint that said Santimoy Ghosh and defendant no.1, Ashoke Kumar Ghosh had ben possessing the 'Ka' schedule property in ejmal by residing over the residential building and using vacant Bastu land. Thereafter, Santimoy Ghosh and Ashoke Kumar Ghosh have jointly executed one unregistered amicable partition deed wherein it was written that the said deed will be registered within 10-05-2018, but till date the deed has not been registered as per provision of law and therefore it is invalid in the eye of law. It has been more alleged that though in the present L.R. R-o-R, measuring an area of the L.R. plot no. 9105 is 0.0660 acre, but physically it is measuring an area of 0.0620 acre and wherein the present L.R. R-o-R, the name of Brijamohan Bandopadhyay is wrongly recorded in L.R. khatian no. 15509 measuring an area of 0.0006 acre,

Manmohan Bandhopadhyay wrongly recorded in L.R. khatian no. 15587 measuring an area of 0.0005 acre, Ramkinkar Bandhopadhyay wrongly recorded in L.R. Khatian no. 15660 measuring an area of 0.0015 acre and Harimohan Bandhopadhyay wrongly recorded in L.R. Khatian no. 15774 measuring an area of 0.0014 acre. Said L.R. Khatian no. 15509, 15587, 15660 & 15774 are wrong, baseless and against the principles of natural justice having no basis where neither the above stated four persons nor their legal heirs (proforma defendant no. 2 & 3) have no right, title, interest and possession in the 'Ka' schedule property.

- 3.** It is alleged further that said Santimoy Ghosh and defendant No. 1 had been possessing the 'Ka' schedule property in ejmal as stated above, then Santimoy Ghosh died leaving behind his legal heirs wife, i.e., plaintiff no.1 herein and two daughter, i.e., plaintiff no. 2 & 3 as per Hindu Succession Act and after his demise, the plaintiffs and defendant no.1 have been owning and possessing their respective share as stated above in the 'Ka' schedule property in ejmal. Then defendant no. 1 tried to make construction by collecting construction materials by way of dispossessing the plaintiffs from their shares of undivided 'Ka' schedule property without making any partition as per law. Thereafter, on 02-08-2020 plaintiff no.3 requested the defendant no.1 to make partition of the 'Ka' schedule property amicably before making any illegal construction over the undivided valuable portion of the 'Ka' schedule property, but defendant no.1 did not pay any heed

to such request, rather he is trying to dispossess the plaintiffs from the 'Ka' schedule property by making illegal and unauthorized construction by collecting construction materials. On 09-08-2020 plaintiff no.3 again asked defendant no.1 to make partition of 'Ka' before making any construction, but defendant no.1 did not respond.

4. It has been more alleged that on 09-08-2020, plaintiff no.1 lastly requested the defendant no.1 to go for the immediate partition of the suit property but defendant no.1 flatly refused for the same and accordingly plaintiffs filed this instant suit.

5. The defendant no.1 had appeared in this suit and filed their written statement on 26-04-2022 and the same was accepted on the same day. It is pertinent to mention here that the suit is proceeding ex parte against proforma defendant no. 2 & 3 vide order dated 04-03-2021 as they failed to appear in this suit even after receiving of summons.

Now let us see the case of the defendant.

6. Defendant no.1 denied and disputed all the materials allegation as alleged by the plaintiffs except the matter of record. It is averred by defendant no. 1 in the written statement that the 'Ka' schedule property as mentioned by the plaintiffs in their plaint, was purchased by the father of plaintiff no. 2 & 3 and husband of plaintiff no.1, namely, Shantimoy Ghosh and Ashok Kumar Ghosh from one Smt. Ranu Bose, wife of Aditya Kumar Bose by virtue of a

registered deed of sale being no. 3709 of 1981 dated 21-09-1981 before the Sub-registrar, Bishnupur. Thereafter, one amicable settlement was done between said Shantimoy Ghosh and Ashok Kumar Ghosh before the Bishnupur Municipality in presence of Chairman and SAE of Bishnupur Municipality regarding the 'Ka' schedule property and the said property has already been partitioned through amicable settlement deed dated 18-04-2018.

7. Considering the pleading of the parties to the suit, the following issues were settled in the suit which are as follows:

ISSUES SETTLED IN THE SUIT:

- A.** Whether the suit is maintainable in its present form either in law or in facts?
- B.** Whether the plaintiffs have any cause of action to file this suit?
- C.** Is the suit barred by Section 34 of the Specific Relief Act ?
- D.** Whether the suit is bad for non-joinder and mis-joinder parties?
- E.** Whether the plaintiffs are entitled to get the decree as prayed for in the plaint?
- F.** What other relief or reliefs plaintiffs are entitled to get as per law and under equity?

EVIDENCE ON RECORD

Evidences of Plaintiff's side:-

Ranjita Ghosh, the plaintiff no.3 was examined **as P.W.1**. No further witnesses were produced by the side of the plaintiffs.

Evidences of Defendant's side:-

No witnesses were adduced by the defendant's side. It is pertinent to mention here that on the first occasion P.W.1 partly cross examined and thereafter two consecutive dates were given to the defendant to conclude cross-examination but he failed to conclude the cross-examination of P.W.1 and, accordingly, vide order no. 29 dated 21.11.2024 opportunity of cross examination of P.W.1 was closed and thereafter defendant No.1 did not appear in this suit.

The following documents were marked as Exhibits in favour of the plaintiff : -

Sl. No.	Exhibit no.	Particulars of document	Marked on
1.	Exhibit-1	Certified copy of sale deed no.1304/1963 dated 14-03-1963	26-09-2024
2.	Exhibit-2	Certified copy of deed no.6348/1974 dated 21-10-1974	26-09-2024
3.	Exhibit-3	Certified copy of deed no.3709/1981 dated 21-09-1981	26-09-2024
4.	Exhibit-4	Original plot information of the suit property	26-09-2024
5.	Exhibit-5	Original porcha in the name of Shantimoy Ghosh	26-09-2024

The following documents were marked as **Exhibits in favour of the defendant** : - NIL

DECISION WITH REASONS

Issue nos. A, B & C (The suit is maintainable in its present form and in law, the plaintiff has any cause of action, the suit barred by Section 34 of the Specific Relief Act):-

8. All these issues are clubbed together for brevity of discussion and to concise my discussion. These issues were not agitated at the time of hearing of the argument. It is to be mentioned here in connection with this issue that, cause of action for a suit is the most vital ingredient for its maintainability both in facts and in law. Cause of action has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed and every fact which a defendant would have a right to traverse. It is pertinent to mention here that plaintiff contended that on 09-08-2020, plaintiff no.1 requested the defendant no.1 to go for the immediate partition of the suit property but defendant no.1 flatly refused for the same. In this context it is pertinent to mention here that defendant No.1 did not ask a single

question in this regard and even no denial was taken regarding the same. So, there is proper cause of action. There is no abnormality and irregularity regarding form, nature and manner of the suit. Now let us take a view of the provision as laid down under Section 34 of the Specific Relief Act. It deals as *“Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”* In this instant suit the plaintiffs are claiming their right as a co-sharer of the suit property against the defendant No.1 who is also a co-sharer of the suit property. The suit has been instituted as defendant No.1 did not respond to the request of the plaintiff for amicable partition of the suit property. So, from the pleadings of the plaintiffs it is clear that the civil rights of the plaintiffs have been infringed for the act of the defendant No.1 and therefore, plaintiff prayed to pass orders in respect of their six prayers. Thus, it is very clear that the suit is not barred under the Specific Relief Act in any corner. Further from the entire record, I do not find any ground to hold that the suit is barred by any provisions of law. Hence, all these issues are

decided in favour of plaintiff.

Issue No D (Is the suit bad for non-joinder or mis-joinder of parties)

9. The issue is again taken up for discussion and to come to a reasonable conclusion pertaining to the above noted issue. It is pertinent to mention here that the instant suit for partition was filed by the legal heirs of Shantimoy Ghosh. Defendant No.1 never contended that any other co-sharer except to the parties to the suit are left. It is also pertinent to mention here that plaintiff as well as defendant No.1 categorically accepted that they are the co-sharer in respect of the suit property. In common parlance a further note of caution has also been sounded by indicating that the circumstances of the suit must be of a special nature where actions are between two 'warning groups'. The present case does not show that there was any action between 'warning groups' so as to justify the non-joinder of the parties whose interests would be prejudicially affected.

10. In this context, it is very apposite to mention here that plaintiff contended that in the record of rights some erroneous entries were made and shares of some other persons were mentioned in the record of rights and they were made parties in this suit but they did not turn up in this suit instead of receiving of summons. Moreover, all the connecting

deeds were exhibited in this suit by the plaintiff and all the deed reflects that the predecessor-in-interest of the plaintiff and defendant No.1 are the actual co-sharer of the suit property. Accordingly, there is no ambiguity in the mind of this Court pertaining to any defects in regard to the non-joinder and mis-joinder of the parties. Even during examination-in-chief as well as in cross examination plaintiff accepted that the defendant No.1 is the co-sharers of the suit property. So, undoubtedly it can be accepted that the plaintiffs and defendant No.1 are the actual co-sharer of the suit property and proforma defendant No. 2 and 3 have no right, title and interest in respect of the suit property on the basis of the chain of the deeds and chain of the transfer of the suit property from one person to another. Hence, this issue is also decided in favour of plaintiffs.

Issue Nos F & G (The plaintiffs are entitled to get the decree as prayed for & plaintiffs are entitled to any other relief) :-

11. Now let us consider the above noted issued through the filter of the evidence and exhibited documents. The plaintiff No.3 of this case was examined as P.W.1. She has deposed on behalf of the all plaintiff. She has submitted her examination-in-chief in an affidavit format in accordance with the provision laid down under Order XVIII Rule 4 of the CPC. It is the mere corroboration of the facts which has been

alleged by the plaintiffs in their plaint or rather we can say plaintiffs had copied the ingredients from their plaint and paste it in her examination in chief. During examination-in-chief P.W.1 tendered some documents. She filed three certified copied of sale deed. Be it necessary to mention here that the first deed bearing no.1304 for the year 1963 (Exhibit-1) reflects that the suit property was transferred from the original owners to one Madhuri Rani Ghosh. The second certified copy of deed bearing no.6348 in the year 1974 which was marked as Exhibit-2 reflects that said Madhuri Rani Ghosh transferred the suit property to one Ranu Bose and the third certified copy of deed bearing no.3709 for the year 1981 in favour of Shantimoy Ghosh, the predecessor-in-interest of the plaintiffs. So, there is no doubt in the mind of this Court pertaining to the right, title and interest of the plaintiffs in regard to the suit property. In this context, it is very pertinent to mention here that a single word was not used by the defendant No.1 during the cross examination of P.W.1. pertaining to those documents.

12. Section 8 of the Hindu Succession Act clearly laid down the principles of succession in the case of male Hindus. Section 8 of the Act deals as *“(1) The property of a male Hindu dying intestate shall devolve according to the provision of this chapter— (a) firstly, upon the heirs, being the relatives specified in class I of the schedule; (b) secondly, if there is no heirs of class I, then upon the heirs, being the relatives specified in class II of the schedule*”

13. So, the provision of law also reflects that if a male Hindu died intestate, his property will devolve firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the wife. Here the predecessors-in-interest of the plaintiffs that is the father of plaintiff No.3 was the actual co-sharer of the suit property and he died after leaving behind the plaintiffs as his legal heirs and successors and here plaintiff No.1 is the wife of late Santimoy Ghosh and mother of the other plaintiffs. Accordingly, in accordance with settled principle of law, the property of Santimoy Ghosh (since deceased) will devolve upon his wife and daughters and here in this instant suit, the plaintiff No.1 is the wife and Plaintiff No.2 & 3 are the daughters of the deceased.

14. In concluding note as deduced from the observations made while discussing the earlier issues, it can be declared that plaintiffs have been successful in proving their claim of 1/2 undivided share in the suit property. Therefore, plaintiffs are jointly entitled to have half share and the defendant No.1 is entitled to have 1/2 share in the suit property. Thus, in this factual backdrop plaintiff is entitled to get the decree as prayed for.

Thus, the suit succeeds.

C.F. paid is correct.

Hence, it is,

ORDERED

that the suit be and the same is decreed on contest against defendants without any order as to cost.

That plaintiffs jointly get a decree of partition in preliminary form with respect to 1/2 share in the area as mentioned in the schedule of the plaint. Both parties are given opportunity to partition the property amicably according to the decree passed in this suit within two months from passing of this order in default plaintiff will be at liberty to execute the decree by appointment of survey passed Learned Advocate Commissioner through court.

Prepare decree accordingly.

Return back the original documents to the respective parties after expiry of period of appeal if applied.

Given under my hand & seal of this court on this 23rd day of December, 2024.

In compliance with direction of Hon'ble Supreme Court of India as passed in Civil Appeal No. (S) 6406-6407 of 2010 in Kattukandi Edathil Krishnan & Another -Vs- Kattukandi Edathil Valsan and Others let, be fixed for filing of application for final decree under Order XX Rule 18 of Code of Civil Procedure by any of the parties to the suit.

Dict. & Corr. by me,

*C.J.S.D.
Bishnupur*

*Civil Judge (Sr. Div.),
Bishnupur, Bankura
(J.O. Code WB01209)*