

**HIGH COURT FORM NO.(J) 2
HEADING OF JUDGEMENT IN ORIGINAL SUIT/CASE**

DISTRICT : CALCUTTA

**IN THE COURT OF JUDGE, 10TH BENCH, CITY CIVIL
COURT, CALCUTTA**

**Present : Shri Sudhir Kumar
Ld.Judge, 10th Bench,
City Civil Court, Calcutta**

Date :- 12th day of July, 2017

Title Suit No.1642 of 2006

Sri Tapas Kanta Sen Plaintiff

- VERSUS-

Mrs. Purnima Sen & OthersDefendants

Sri M. Malakar, Advocate(s) for Plaintiff

Sri Nikhilesh Ghosh, Advocate(s) for Defendants

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

J U D G M E N T

This is Suit for declaration and partition.

The plaintiff's Case in brief is that one Chandra Kanta Sen, Rama Kanta Sen and Singharam Sen (since deceased)

acquired right, title and interest and ownership each having 1/3rd undivided share in respect of the suit property. He further stated that one Kanailal Sen was the original owner of the said property and his wife Jogmaya Dassi had life interest in the suit property in the registered deed of partition dt. 04.10.1931. Said Jogmaya Dassi died long ago. Chandra Kanta Sen died on 15.01.1982 leaving behind his widow wife Binapani Sen, son Tapas Kanta Sen and four daughters namely Tapati Das, Arati Dutta, Anima Paul and Shefali Das. Said Shefali Das died on 25.07.1998 leaving behind her one son Dipankar Das and two daughters namely, Sikha Dey and Likha Chandra. Another co-owner Rama Kanta Sen died in the year 1953 leaving behind one son namely Rabin Sen. Singharam Sen died in the year 1987 leaving behind his widow Komala Sen, one son Samir Kr. Sen and one daughter Ranjita Dey. Later Samir Sen who was defendant no.1 died leaving behind his wife Purnima Sen and son Partha Sarati Sen who inherited the share of Samir Sen equally. After the death of Shefali Das her share was inherited by her legal heirs. After the death of Binapani Sen widow of Chandra Kanta Sen her legal heirs inherited the share of Binapani. In this way he stated that Rabin Sen i.e. defendant no.4 will inherit 1/3rd share of Rama Kanta Sen, plaintiff will inherit 1/15th share in the suit property as his two sisters Tapati and Arati and legal heirs of another sister Shefali gifted their shares in favour of plaintiff. In this way plaintiff acquired 1/15th share. 1/15th share is acquired by Anima, another sister of plaintiff and later the same was acquired by her legal heirs i.e. pro-defendant no.7A, 7B. He further stated that the 1/3rd share of Singharam Sen was inherited by his widow Kamala (defendant no.3), his son Samir Sen (defendant no.1), and his daughter Ranjita Dey (defendant no.2). Later Kamala Sen died and her share was equally inherited by her son and daughter. In this way defendant no.1 and 2 inherited 1/6th share each. Later defendant no.1 died leaving behind his wife Purnima Sen (defendant no.1(i)) and Partha Sarati Sen (defendant no.1(ii)). In this way they inherited 1/12th share

each in the suit property. Plaintiff further stated that he requested defendant for partition of the suit property, as because it has not been amicably partitioned and also sent lawyer's letter to defendants on 28.07.2004. But they did not agree for partition. The cause of action for filing this suit arose on 28.07.2004. Hence, this suit

On the other hand, defendant nos.2, 4, 1(i) & (ii) filed W.S stating that this suit is not maintainable in its present form and law. This suit bad for mis-joinder and non-joinder of the parties as all the co-shares of the premises have not been made party in this suit. This suit is hit U/S 52 of T.P. Act, as because property in suit being sub-judice. Any transfer of the same without leave of the court is not binding upon the parties, as because during pendency of the suit registered Deed of Gift dt.25.04.11 was executed and it cannot be transferred during pendency of the suit. They denied that plaintiff acquired 4/5th share out of 1/3rd share of Chandra Kanta Sen after execution of said Deed of Gift. Hence, they prayed to dismiss this suit.

Upon the pleadings of both parties following issues have been framed after recasting the same:-

1. Is the Suit maintainable in its present form and law?
2. Is the suit bad for mis-joinder and non-joinder of parties?
3. Is this suit barred by principle of waiver, estoppel and acquiescence?
4. Is the property in question already partitioned by metes and bounds?
5. Is there any deed of partition dt. 09.10.1931 relating to the suit property?
6. Are the plaintiff and defendants co-sharers in respect of the suit property?
7. Is this suit barred by law of limitation?
8. Is this suit barred by the provision of Section 52 of T.P. Act?

9. Have the plaintiff and defendants any right, title and interest in the suit property?

10. Is the plaintiff entitled to get decree or partition in this suit?

11. To what relief/reliefs, if any, plaintiff is entitled to get?

DECISION WITH REASON

Issue no.2 to 5 and 7:

These five issues have been taken up simultaneously for sake of discussion and avoiding repetition at the time of discussion.

At the time of argument Ld. Lawyers of neither side raised before this court that the suit property has already been partitioned among its present co-sharers by metes and bounds and they also did not submit before this court that any co-sharers are left out in this case. If that be so then it can be said that this suit is not bad for defect of parties and not barred by principle of waiver, estoppel and acquiescence and it also can not be said that the suit property has already been partitioned by metes and bounds among its co-sharers. Hence, it cannot be said that the suit property has been partitioned among present co-sharers vide any partition deed dt. 09.10.1931. It also cannot be said that the suit is barred by law of limitation. If that be so, then all these five issues have been decided in favour of plaintiff.

Issue nos. 1, 6, 8, 9 and 10:

These five issues have been taken up simultaneously for sake of discussion and avoiding repetition at the time of discussion.

Ld. Lawyer of defendant no.1 (i) & (ii) submitted and

admitted before this court that one Kanailal Sen was the original owner of the suit property which he got the same in partition. He further submitted that said Kanailal Sen died leaving behind his wife Jogmaya Dasi who have life interest and three sons i.e. Rama Kanta Sen, Chandra Kanta Sen and Singharam Sen. They inherited 1/3rd share each after the death of Jogmaya Dasi. Thereafter, Chandra Kanta Sen died leaving behind his wife Binapani Sen, and four daughters Shefali, Tapati Das (Pro-defdt. no.5), Arati Dutta (Pro-defdt. no.6) and Anima Paul (Pro-defdt. no.7) and one son Tapas Kanta Sen (Plaintiff) and they inherited 1/15th share each after the death of Binapani Sen and Chandra Kanta Sen. Later Anima Paul died leaving behind her husband Tapas Pal and son Partha Pal who are pro-defendant no.7A and 7B respectively. Shefali Died leaving behind his one Son Dipankar Das (Pro-defdt. No.8) and two daughters Shikha Dey (pro-defdt.no.9) and Likha Chandra (Pro-defdt.no.10) and they inherited the share of Shefali. He further submitted that Rama Kanta Sen died leaving behind Rabin Sen (defendant no.4) who inherited 1/3rd share in the suit property. Singharam Sen died leaving behind his wife Kamala Sen(defdt. no.3), his son Samir Sen (defdt. no.1) and Ranjita Dey (defdt. no.2). They inherited 1/6th share each after the death of Kamala Sen. Later Samir Sen died leaving behind his wife Purnima Sen (defdt. no.1(i)) and his son Partha Sarati Sen (defdt. no.1(ii)). They inherited 1/12th share each in the suit property. He further submitted that during the pendency of the suit pro-defendant no.5, 6, 8, 9, 10 gifted their share to plaintiff, which cannot be done U/S 52 of T.P. Act. Hence, this suit is hit by principle of lis pendency. Hence, he submitted that plaintiff is not entitled to get decree in this suit.

On the other hand defendant nos. 2, 4 and plaintiff admitted the share which has been stated by defendant no.1(i) & (ii). But Ld. Lawyer of plaintiff submitted before this court that this suit is not hit by principle of lis pendency, as because the legal heirs of Shefali, Tapati and Arati transferred

their share by way of gift to plaintiff and same has been marked Exbt.4 in this suit. Moreover, these persons are also party in this suit and they did not raise any objection against the said transfer. If that be so, then there is no impediment to pass a preliminary decree in this suit and the suit is maintainable as per law.

On perusal of record I find that said Kanailal Sen was the owner of the suit property in question by virtue of a partition deed which has been marked Exbt.1 in this suit. The said Kanailal Sen died leaving behind his wife Jogmaya Dasi who has life interest and three sons i.e. Rama Kanta Sen, Chandra Kanta Sen and Singharam Sen. They inherited 1/3rd share each after the death of Jogmaya Dasi. Thereafter, Chandra Kanata Sen died leaving behind his wife Binapani Sen, and four daughters Shefali, Tapati Das (Pro-defdt. no.5), Arati Dutta (Pro-defdt. no.6) and Anima Paul (Pro-defdt. no.7) and one son Tapas Kanta Sen (Plaintiff) and they inherited 1/15th share each after the death of Binapani Sen and Chandra Kanta Sen. The death certificate of Chandra Kanta Sen has been marked Exbt.2 and death certificate of Binapani Sen has been marked Exbt.3 in this suit. Later Anima Paul died leaving behind her husband Tapas Pal and son Partha Pal who are pro-defendant no.7A and 7B respectively. Shefali Died leaving behind his one Son Dipankar Das(Pro-defdt. No.8) and two daughters Shikha Dey (pro-defdt.no.9) and Likha Chandra (Pro-defdt.no.10) and they inherited the share of Shefali. During the pendency of the suit pro-defendant nos.5, 6, 8, 9, 10 gifted their share to plaintiff and the said deed of gift has been marked Exbt.4 in this suit. In this way Tapas Kanta Sen i.e. plaintiff has right, title and interest in the suit property to the extent of 4/15th share. I also find that Rama Kanta Sen died leaving behind Rabin Sen (defendant no.4) who inherited 1/3rd share in the suit property. I also find that Singharam Sen died leaving behind his wife Kamala Sen (defdt. no.3), his son Samir Sen (defdt. no.1) and Ranjita Dey (defdt. no.2). They inherited 1/6th share each after the death

of Kamala Sen. Later Samir Sen died leaving behind his wife Purnima Sen (defdt. no.1(i)) and his son Partha Sarati Sen (defdt. no.1(ii)). They inherited 1/12th share each in the suit property. I am not agree with the contention of Ld. Lawyer of defendant no.1(i) & 1(ii) that this suit is barred by principle of lis pendency, as because the persons who transferred their share in favour of plaintiff are already on record and the person i.e. plaintiff to whom the property was transferred is also in the record. If that be so, then it cannot be said that in any manner it affected the present suit and dismissing the suit on that ground it will leads to multiplicity of the suit. Moreover I find that this suit has been filed in the year 2006 and since then it is pending before this court. If mere this flimsy ground the suit is dismissed in that case justice will not be delivered in favour of party to the suit. Considering this view it can be said that plaintiff has 4/15th share in the suit property, defendant no.4 has 1/3rd share in the suit property, Pro-defendant no.7A and 7B have jointly 1/15th share in the suit property, defendant no.2 have 1/6th share in the suit property and defendant no.1(i) & 1(ii) will have 1/12th share each in the suit property. Accordingly, the suit is well maintainable in present form. The defendants are the co-share of the suit property which has not been partitioned earlier among them. Plaintiff and defendants have right, title and interest in the suit property, hence plaintiff is entitled to get decree of partition in this suit. But the suit is not barred by provision of Section 52 of T.P. Act. Accordingly, these issues have been disposed of.

Issue no.11:

Since issue nos.1 to 10 have been disposed of in favour of plaintiff, hence plaintiff is entitled to get decree in this suit.

C.F. Paid is found correct.

Hence, it is,

ORDER

that the instant Suit be and the same is decreed on contest against defendants nos.1(i) and (ii), 2, and 4 but ex parte against the rest but without cost.

The right, title and interest of plaintiff is declared to the extent of 4/15th share in the suit property.

The right, title and interest of defendant no,.4 is declared to the extent of 1/3rd share in the suit property.

The right, title and interest of Pro-defendant no,.7A and 7B are declared jointly to the extent of 1/15th share in the suit property.

The right, title and interest of defendant no,.2 is declared to the extent of 1/6th share in the suit property.

The right, title and interest of defendant no.1(i) and 1(ii) are declared to the extent of 1/12th share each in the suit property.

Both parties are directed to partition the suit properties amicably by maintaining their respect possession as far as practicable within 60 days from the date thereof, failing which either of the parties have got liberty to partition the property in respect of their respective share by appointing survey/ engineering passed Pleader Commissioner through court to make the decree final.

Dictated & corrected by me,

Judge.

Judge, 10th Bench,
City Civil Court, Calcutta.