West Bengal Form No. 3702

JUDGMENT IN APPEAL

District: Murshidabad
In the 4th Court of Additional District Judge,
Berhampore, Murshidabad.

Present: S. Arnab Ghosal,

Additional District Judge, 4th Court,

Berhampore,Murshidabad.

JO Code-WB00809.

Tuesday, 23rd June, 2026

Title Appeal No. 69 of 2014.
CNR No.WBMD01-006015-2014

This appeal having been heard on 8th & 15th June, 2026
in presence of –

Tushar Kanti Majumdar

.............Ld. Adv. for the Appellant.

Siddhartha Dhar & Biswanath Roy

..........Ld. Advs. for the Respondents.

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

JUDGMENT

Partition Suit 154 of 2011 was decreed in favour of the plaintiffs by the Ld. Civil Judge (Jr. Divn.), 2nd Court at Berhampore on 27 March 2014. The learned trial court would conclude that the plaintiffs had right, title, interest and possession "in respect of 8 (eight) annas share in the suit land… that the defendant no. 3 has 8 (eight) annas of share in the suit property and that the defendant nos. 1 and 2 have got no share left in the suit property."

The decree was signed and sealed on 21 April 2014. The property in dispute was one decimal of land in plot 3001 (within Sarbangopur mouza).

The instant appeal is at the instance of the second and third defendants. The plaintiffs and the third defendant have figured as the contesting respondents.

During the pendency of the appeal, on the last day of November, 2017 the appellants had taken out an application under Order 41 Rule 27 of the Civil Procedure Code, 1908. The application was heard along with the appeal and its fate would be revealed by the present judgment.

Arguments were opened by the learned advocate for the appellants, and the brunt of the attack against the learned trial court's adjudication was built upon the prayer for adduction of additional evidence. According to the learned advocate, the error in the impugned judgment lay in the finding that the second and third defendants were left with no proprietary interests in the property in dispute. It was forcefully argued in this context that these defendants had not transferred their ownership rights in the property to the third defendant by way of sale but had in reality only executed a mortgage, the transaction being essentially "loan in substance". With a view to establish this contention, the second and third defendants desire the production of additional evidence in the form of a compromise petition that purportedly recorded the third defendant's admission as to the true nature of that transaction.

The learned advocate for the plaintiffs-respondents would express no dissatisfaction with the learned trial court's verdict. The learned counsel would submit that division of the property had been lawfully made, and that, the dispute *inter se* between the two sets of defendants ought not to eclipse the plaintiffs' right to enjoy in severalty the eight annas worth of share that the impugned decree purported to exclusively allot in their favour.

The third defendant, through his learned advocate, repudiated the prayer for additional evidence; supported the impugned judgment and decree; and canvassed for dismissing the appeal.

Case law relied upon by the arguing set of learned advocates shall be dealt with at an opportune moment for the sake of coherent exposition.

Arguments were concluded on the 15th of the current month. This day was fixed for declaring the outcome of the appeal.

Decision with Reasons

A striking feature of the case that was fought before the learned trial court needs to be expressed in black-and-white at this stage to justify my close-fisted narrating of the facts.

The plaintiffs pinpoint their titular origin to Mahadeb Mondal who, it was averred in the plaint, had purchased from Rani Nath by dint of a registered conveyance dated 20 September 1962. It was also a part of the plaintiffs' case that Rani Nath was the daughter and sole heir of Habul Nath who had 50% ownership rights and possession in the property in question. Thus, the plaintiffs claimed to be the co-owners of Habul Nath's property through Mahadeb Mondal by operation of the law of inheritance. These factual averments were never seriously disputed, and more importantly, the plaintiffs' evidence – oral and documentary, were probative of them.

The appellants are the sons of Bisheswar Mondal. Admittedly, Bisheswar had obtained ownership interests in the property in question on the basis of purchases from Dwijabar and Gaur Chandra – the original owners. After the death of their father and in consequence of a couple of familial transfers the appellants had become the owners of the eight annas recorded share of Dwijabar and Gaur Chandra.

The plaintiffs claimed a half share in the property in dispute. This claim was anchored to the following assertions duly established: Habul Nath had half share in the property as was recorded in CS Khatian 1801; this half share had devolved upon Rani Nath in whose name stood the

RS Khatian 1801; and finally, Rani Nath had sold that half share to the plaintiffs' predecessor-in-interest Mahadeb Mondal by dint of a registered conveyance. By the clearest of implication in their pleading, and subsequently, during the stage of evidence and in the course of oral arguments, the plaintiffs wanted the court to believe that the remaining half of the property in dispute that was originally recorded in the names of Dwijabar and Gaur Chandra in the CS Khatian 639 had come under the ownership of the appellants by way of inheritance as well as transfers *inter vivos*.

The available materials on record consisting of unchallenged assertions touching the issue of devolution of title, sufficiently proved documentary evidence and unambiguous admissions blinded the learned trial court to the law that had to be applied first to decide the maintainability of the action for partition. Partition presupposes unity of title and jointness of possession. The impugned judgment steers clear of these pivotal aspects and goes with the simple mathematics of fractionated division. As it appears, the learned trial court had blindly acted upon the consensual position that the property in question was co-owned by Habul Nath on the one hand and Dwijabar and Gaur

Chandra on the other. This foundational proposition of co-ownership put forth by the plaintiffs and tacitly adopted by both sets of defendants was required to be examined on the anvil of the relevant laws. It is this singular aspect that shall be discussed in the present judgment, but before that a few words must be said regarding the plea of the appellants' that was sought to be rested upon the Bengal Moneylenders Act, 1940.

It had come in evidence that the appellants had executed a conveyance in favour of the third defendant in October, 2006. This deed purported to transfer the appellants' ownership rights in the property in dispute, and it was this deed that had induced the learned trial court to observe that the appellants had no subsisting interest in the property and further, that it was the third defendant who had stepped into their shoes. The pleadings related to the deed and the evidence adduced in support thereof were, however, never strongly supportive of such observations.

Right from the days of their written statement the appellants had contended that the transaction was actually a mortgage, and that the deed, though ostensibly a sale deed, was the repository of a mortgage transaction and recorded a loan in substance. In his examination-in-chief on affidavit the first defendant had supplied firm evidential basis to the averments made in the written statement. It was stated on oath that in a compromise petition filed in a proceeding under sections 36 and 38 of the Bengal Moneylenders Act the third defendant had admitted the appellants' case that the transaction was in reality a mortgage and loan in substance. It was the compromise petition that the appellants wanted to adduce as additional evidence.

The true and logical test that determines the viability of an application for additional evidence is the appellate court's ability to decide the appeal in the absence of such evidence [(2018) 3 WBLR (SC) 682 and (2014) 1 WBLR (Cal.) 905 – both cited on behalf of the appellants]. Where, as in the present case, the appeal can be decided effectively without the aid and assistance of additional evidence there is no mandate in law to stall the proceedings and seek such evidence. Here, as I have hinted before, the appeal can be conclusively determined on the basis of law and *de hors* the additional evidence as proposed to be introduced by the appellants. Consequently, the appellants' attempt at invoking

Order 41 Rule 27 of the Civil Procedure Code must be given the short shrift.

The appellants had an undeniable right to question the learned trial court's judgment that had in effect robbed the appellants of their claimed ownership rights in the property in dispute. And now, in consequence of the exercise of that right when the learned trial court's verdict has been brought before this forum for appellate processing I am under a fundamental duty to apply the correct legal principles to the material facts of the case notwithstanding the litigants' failure to rely upon and make use of those legal principles.

It was nobody's case that Habul Nath, Dwijabar and Gaur Chandra had descended from a common stock. In other words, these original recorded owners of the property in dispute were not kindred souls and neither was there any story of joint purchase of that property by them. In fact, there was a separate CS Khatian in the name of Habul, and similarly, Dwijabar and Gaur Chandra were recorded as owners in a different CS Khatian. Thus, the one decimal of land over which the suit for partition was fought was not joint property in the ordinary legal sense of the term, and there was no unity of title between the recorded owners.

While the appeal was being argued it was pointed out to the learned advocate for the plaintiffs that a prerequisite of partition – unity of title between the litigating parties was missing. In reply, reliance was placed upon section 14 of the West Bengal Land Reforms Act, 1955. It was argued by the learned advocate for the plaintiffs that as the property had not been partitioned either by a registered instrument or by decree or order of a court the same had to be regarded as joint property liable to be partitioned between its "co-sharers". With a view to buttress this proposition reliance was placed on Laxmikanta Chowdhury vs. Madhusudan Paik reported in 2016 (2) CLJ (Cal) 181.

In my humble opinion, neither section 14 nor the cited judgment helps the plaintiffs in any tangible manner.

The 14th section of the 1955 statute will not apply unless there are "co-sharers of a raiyat in plot of land". "Co-sharer of a raiyat in a plot of land", in terms of section 2 (6) of the Act, means a person, other than the raiyat, who has an undemarcated interest in the plot of land along with the raiyat. It is precisely at this juncture that I must bring into focus the Full Bench judgment of the honourable Calcutta High Court delivered in Madan Mohan Ghosh vs. Sishu Bala Atta [AIR 1972 Cal 502].

The question that was decided by the Full Bench was “whether after the coming into force of Chapter VI of the West Bengal Estates Acquisition Act, co-sharership is destroyed, or in other words, whether new tenancies are created by virtue of the provisions of the West Bengal Estates Acquisition Act in respect of each co-sharer.” Chapter VI of the Estates Acquisition Act was enforced in all the districts of the State with effect from 10 April 1956. Thereafter, with the issuance of notifications under section 4 of the Act the interests of raiyats and under-raiyats vested in the State with effect from 14 April 1956.

The legal effect of vesting of the interests of raiyats (and under-raiyats) was elucidated at great length by the honourable High Court. It was observed that land retained by a raiyat under section 6 (1) “becomes the subject-matter of a separate tenancy and the raiyats who were his co-sharers immediately before the date of vesting, will have no interest in the land retained by him”. The governing ratio of the judgment at the highest level of abstraction appears to be that by dint of section

6 (2) the joint tenancy of erstwhile co-sharers gets converted into separate and distinct tenancies in respect of land which each quondam co-sharer chooses to retain. After the date of vesting, each raiyat becomes a direct tenant under the State, and one raiyat cannot claim to have any interest in the land which another raiyat has retained (or may choose to retain) under section 6 (1).

The honourable High Court (in paragraph 17 of the judgment) reinforced its interpretation regarding the effect of vesting of the interests of raiyats by alluding to the West Bengal Estate Acquisition Rules (1954) in general and paragraph 7 of the Schedule B in particular. Summarising the effects of paragraphs 7 (2) and (4) it was observed that the Revenue Officer partitions and demarcates the land retained by a raiyat, and the land so partitioned and demarcated belongs exclusively to the raiyat as tenant holding directly under the State. It was further observed in this regard "the erstwhile co-sharer raiyats will have no interest whatsoever in the land retained by one of them and partitioned and demarcated by the Revenue Officer. This also clearly indicates that the intermediaries or raiyats who were co-sharers in respect of the land before vesting ceased to be so after vesting." It was the firm view of the honourable High Court that "to hold otherwise, will be contrary to the different provisions of the Act and the clear intention of the legislature in this regard."

The Full Bench judgment, however, did not sound the death knell for the concept of co-sharership in its entirety. The honourable High Court made it clear that co-sharership was possible by devolution of interests of a raiyat in the land retained by him. A raiyat holding a separate and direct tenancy under the State may be survived by legal heirs. It is these legal heirs who will become co-sharers in the land by successory devolution. Akin to this, co-sharership can also arise in case of joint purchase of land. The width of the concept of co-sharership, it is submitted, has been conclusively and peremptorily whittled down by the Full Bench judgment to these only two instances - devolution by succession and joint purchase.

It is obvious that as the Full Bench judgment had reached the aforesaid conclusions by interpreting the Estates Acquisition Act and the Rules framed thereunder its foundational basis could not have been changed by any amendment to the West Bengal Land Reforms Act, 1955. Section 2 (6) of the later law was amended in 2000 (with retrospective effect from 7 August 1969) and "holding" was substituted by "co-sharer of a raiyat in a plot of land." The substituted concept does not impinge upon the fulcrum of the Full Bench judgment which consisted of a few specific provisions of the 1953 law and a part of the rules framed thereunder, and not any provision of the Land Reforms Act including "holding". Rather, as it appears to me, the introduction of "co-sharer of a raiyat in a plot of land" may well have been with a view to synchronise the law with the Full Bench precedent.

After the vesting of the interests of raiyats no person other than a co-owner can have undemarcated interest in the plot of land along with the raiyat. Thus, one may well reach the conclusion that the legislature in express approval of the Full Bench judgment had curtailed the ambit of co-sharership and restricted its operation only to cases of true co-ownership where each co-owner has an equal and undemarcated interest in every square inch of the joint property. No person other than a co-owner can possibly have an undemarcated interest in land that has been retained by a raiyat and in respect of which the raiyat has become a direct tenant under the State. Retention followed by demarcation by the Revenue Officer, preparation of the record of rights and assessment of rent payable to the State – these official acts consummate the effect of vesting of the interests of raiyat and create an exclusive tenancy in his favour. No person who is not a co-owner in the land retained by the raiyat can be said to have "an undemarcated interest" in that land along with that raiyat. Thus, in order to be a co-sharer one must be of legal necessity a co-owner; without co-ownership either by devolution or by joint purchase there cannot be co-sharership on the plea of owning and possessing some quantity of land in the same plot where a raiyat also owns and possesses land as direct tenant under the State.

The original recorded owner Habul Nath had his name registered in a separate CS Khatian. Habul Nath's daughter Rani had her name recorded in a separate and exclusive RS Khatian. It is thus clear that Habul's property in the plot had been separately assessed to rent and likewise, Dwijabar and Gaur Chandra, both assessed to rent under separate CS and RS Khatians, were regarded as direct tenants under the State in respect of the land they owned and retained. In view of the fact that there were two distinct and direct tenancies in the plot, co-sharership between Habul on the one hand and Dwijabar and Gaur Chandra on the other was legally impossible in the light of the law enunciated by the honourable Calcutta High Court [Madan Mohan Ghosh (supra)]. And there being no case of co-ownership, either by devolution or by joint purchase, there was no co-sharership between Habul and his successors-in-title on the one hand and Dwijabar and Gaur Chandra or their successors-in-title on the other even in the attenuated form that had received imprimatur from the Full Bench judgment.

As the parties to the *lis* (including their respective predecessors-in-title) were not co-sharers section 14 of the Land Reforms Act could not have been the plaintiffs' saviour and a viable answer to the Court's expressed dissatisfaction with regard to titular unity. The land that had been retained by Habul Nath had become his exclusive and separate tenancy under the State, and the exact position prevailed in respect of the land that was retained and owned by Dwijabar and Gaur Chandra. The tenancies having been separated with effect from 14 April 1956, partition by means of a registered instrument or a decree or order of a court was always redundant luxury.

It is clear as day that the plaintiffs claiming through Habul had no proprietary title and interest in the land that had come under the ownership of the appellants. Similarly, the appellants had no titular nexus with the plaintiffs' land. Consequently, it was not open to the plaintiffs to seek partition of the entire property in dispute. The suit for partition as framed was always afflicted with the terminal malady of non-maintainability.

The learned advocate for the plaintiffs may have been professionally privileged in trying his luck with Laxmikanta Chowdhury (supra), the judgment that purports to give primacy to section 14 of the Land Reforms Act without taking into consideration the impact of the Full Bench judgment, but it is patently obvious that a Single Bench judgment deciding an issue cannot hold the field in opposition to a masterly legal exposition touching the same issue (s) that has been handed down by a Full Bench of the same honourable High Court.

The other two judgments that were relied upon by the learned advocate for the plaintiffs [2012 (1) CLJ (Cal) 5 and AIR 1992 Calcutta 222] have no manner of application in the facts and circumstances of the instant case.

It is absolutely clear by now that the maintainability issue had to be decided against the plaintiffs. There was no unity of title vis-à-vis the property in dispute between the plaintiffs on the one hand and the appellants on the other. The action for partition was misconceived. The plaintiffs, as raiyats of the land that Mahadeb had purchased from Rani Nath had no manner of interests in the land that had been retained by Dwijabar and Gaur Chandra, and which ultimately came under the ownership of the appellants by inheritance and transfer. Thus, no suit for partition at the instance of the plaintiffs was maintainable when it purported to bring within its ambit the appellants' separate property.

The appeal deserves to be allowed.

Court fee paid is correct.

Hence,

<u>ORDERED</u>

That, the title appeal 69 of 2014, is allowed on contest. No costs.

The impugned judgment and decree passed by the 2nd Court of the Ld. Civil Judge (Jr. Divn.) at Berhampore are set aside.

Return the TCR at once along with a copy of the appellate judgment to the learned trial court.

S. Arnab Ghosal

ADJ, 4th Court,

Berhampore.