

Title Suit 04 of 13 (Reg. 114 of 15)
CNR No. WBSP07-000964-2015
J.O Code-WB01088

Order dated 04-03-2025.

Today is fixed for hearing petitions dated 26.11.2024, 13.12.2024 and 18.02.2025, W/O if any, in the meantime.

Plaintiffs are present by filing hazira.

Defendant no. 9 files hazira.

Defendant no. 2 (a) to 2 (c), and the legal heirs of defendant no. 3, defendant no. 4 and legal heirs of defendant no. 8 and 10 are present by filing hazira.

Learned Advocate on behalf of the plaintiffs filed an application under Order 22 Rule 2 of C.P.C. for expunging the name of deceased defendant No. 6 namely, Anima Roy from the cause title.

Copy served.

Learned Advocate on behalf of the petitioner Subhankar Pal not pressed their application under Order 1 Rule 10(2) of C.P.C. since Subhankar Paul has already been a party being defendant No. 10(a) in the suit. The petition being not pressed stands rejected. ***The vokatnama filed on behalf of defendant No. 10(a) is hereby accepted.***

Learned Advocate on behalf of the petitioner Sujata Pramanik not pressed their application dated 26.11.2024 since Sujata Pramanik has already been a party being defendant No. 4 in the suit. The petition being not pressed stands rejected. ***The vokatnama filed on behalf of defendant No. 4 is hereby accepted.***

Learned Advocate on behalf of the petitioner Sarbani Roy and Prasun Chowdhury not pressed their application under Order 1 Rule 10(2) of C.P.C. since Sarbani Roy and Prasun Chowdhury representing the minor daughters Hriti Chowdhury and Aarna Chowdhury had already been a party being defendant No. 3(b), 3(a)(i) and 3(a)(ii) respectively in the suit. The petition being not pressed stands rejected. ***The vokatnama filed on behalf of defendant No. 3(b), 3(a)(i) and 3(a)(ii) is hereby accepted.***

Now the application filed by the petitioner, Arnab Mondal under Order 1 Rule 10(2) read with Section 151 of C.P.C. is taken up for hearing.

The Ld. Advocate on behalf of the petitioner submitted before the Court that the petitioner being the only legal heir of defendant No. 8, Smt. Anjali Mondal came to learn about the suit from his near relatives wherein his mother Anjali Mondal who died intestate on 01.05.2024 was the defendant No. 8. The petitioner further contended that suit has already been decreed in preliminary form on 06.12.2024 declaring his mother's share and as such he being the legal heir of defendant No. 8

and also being co-owner of the suit property prayed for impleading him as party to the suit in place of his deceased mother.

Heard. Considered. Prayer is formal in nature and considering the fact that Arnab Mondal being a co-owner is a necessary party to the suit I am inclined to allow the prayer of the plaintiffs.

Hence, it is,

ORDERED

that the application filed by Arnab Mondal under Order 1 Rule 10(2) read with Section 151 of C.P.C. is considered and allowed. Let Arnab Mondal be impleaded as defendant No. 8(a) in the cause title after noting the demise of defendant No. 8. The vokatnama filed on behalf of defendant No. 8(a) is hereby accepted.

The application filed by the plaintiffs under Order 22 Rule 2 of C.P.C. for expunging the name of deceased defendant No. 6 namely, Anima Roy is taken up for hearing.

The Ld. Advocate on behalf of the plaintiffs submitted before the Court that on 18.02.2025 the plaintiffs came to know from petition dated 13.12.2024 of defendant No. 9, Smt. Aruna Mukherjee that defendant No. 6 Anima Roy died on 13.06.2009 leaving behind no issue. The Ld. Advocate on behalf of the plaintiffs further submitted before the Court that defendant No. 8 and defendant No. 9 are the only legal heirs and representatives of Anima Roy, since deceased are already on record. Thus, the plaintiffs have prayed for expunging the name of defendant No. 6 from the cause title.

Heard. No objection raised by the Ld. Advocates on behalf of the defendants during hearing.

Since, this is a suit for partition and prayer is formal in nature, prayer is considered and allowed.

Plaintiffs are accordingly directed to file revised plaint.

Now the application filed by the plaintiffs under Section 152 of C.P.C. is taken up for hearing.

The Ld. Advocate on behalf of the plaintiffs submitted before the court that in connection with Suit No. T.S. 04 of 2013 judgment has been delivered on 06.12.2014 and on 28.01.2025 it was ascertained that there was some typographical mistake in the Judgment dated 06.12.2024 which are required to be rectified according to their prayer for ends of justice.

Heard all the parties. The inadvertent mistakes crept in judgment date 06.12.2024 as stated by the plaintiffs are only clerical and typographical in nature and let the same be rectified accordingly. ***The prayer of the plaintiffs under Section 152 of C.P.C. is accordingly considered and allowed.***

D.A. to do the needful.

Now the application filed by the Learned Advocate on behalf of the defendant no. 9 under section 151 of C.P.C. is taken up for hearing.

The Ld. Advocate on behalf of defendant No. 9/ petitioner submitted before the court that according to the plaintiff's case the suit property originally belonged to Ramendra Krishna Das. He died intestate in the year 1965 and his wife Nirmal Nalini Das expired in the year 1992 leaving behind four sons and two daughters out of which Sunita Bala Das predeceased her parents. The elder brother Sunil Kumar Das expired in 1995 leaving behind his wife, one son and three daughters being defendant No.s 1 to 5 in this suit. Thereafter defendant No.1 expired. The 2nd , 3rd , 4th sons of Ramendra Krishna Das namely, Saileswar Das, Sureswar Das and Soumen Das died as bachelor in the year 2007, 2001 and 2005 respectively. The eldest daughter Promila Manna expired in the year 2007 and her legal heirs are defendant No. s 6 to 9 in this suit. The youngest daughter Sunita Bala expired on 28.07.1962 leaving her husband Kali Shankar Das who expired on 29.01.1987 and two sons being the plaintiffs of this suit and one daughter Dipali Pal who is defendant No. 10 in this suit. The share of the plaintiffs along with defendant No. 10 is jointly 1/3rd in the suit property. The defendant No.s 1 to 5 jointly have 1/3rd share and defendant No. 6 to 9 jointly have 1/3rd share. All the parties in the suit were in amicable joint possession of the suit property. But due to dispute and difference about share and possession the plaintiffs filed the present suit for injunction and partition. According to the defendant No. 9 the statement of the plaintiffs that defendant No.s 6 to 9 jointly have 1/3rd share is not correct. According to defendant No. 9, defendant No. 6 got expired on 13/06/2009 leaving behind no issue. Defendant No. 7 died on 23.09.2019 leaving behind no issue but defendant No. 8 died intestate leaving behind only one son namely, Arnab Mondal who is necessary party in this suit. Thus, according to defendant No. 9 Arnab Mondal being the co-owner having undivided 1/6th share of the property left by Promila Manna. Promila Manna being one of the daughters of Ramendra Krishna Das inherited 1/6th share in the suit property. After her demise her 1/6th share devolved upon Anima Roy, Anita Manna, Anjali Mondal and Aruna Mukherjee i.e., defendant No.s 6 to 9 respectively. Upon demise of the said daughters Aruna Mukherjee(defendant No. 9) and Arnab Mondal (legal heir of defendant No. 8) became the co-owner in respect of 1/6 th share of the suit property. Thus, the defendant No. 9 prayed for necessary order modifying the preliminary decree and to pass order that 1/6th share of Promila Manna devolved upon defendant No. 9 and legal heir of defendant No. 8, Arnab Mondal.

Defendant No. 2(a) to 2(c) by filing written objection contended before the Court that Ramendra Krishna Das was the original owner of the suit property. He died

intestate in the year 1965 leaving him surviving his wife Nirmala Nalini Das and his four sons and two daughters. Thereafter, Nirmala Nalini Das expired in the year 1992. Out of their for sons and two daughters, Suniti Bala Das predeceased her parents and she died on 28.07.1962 leaving her sons and daughters. Thus, after demise of Ramendra Krishna Das and his wife the property left by said deceased devolved upon his four sons namely, Sunil Kumar Das, Saileswar Das, Sureswar Das, Soumen Das and two daughters viz. Pramila Manna and upon the legal heirs of the predeceased daughter Sunita bala Das who equally became the owner of 1/6th share each in the property. Thereafter, Sunil Kumar Das expired on 1995 leaving behind his wife Pranati Das who was defendant No. 1 and one Alope Das who was defendant No.2 and three daughters viz. Jayanti Mondal, defendant No. 3 Sujata Pramanik, defendant No. 4 and Sunita Hazra, defendant No. 5 in this suit who after demise of Sunil Kumar Das inherited 1/30th share each in the suit property. Thereafter, by executing a deed of gift dated 26th Falgun 1412 B.S. corresponding to 11th March, 2006 Saileswar Das and Pranati Das transferred their $1/30 + 1/3 = 11/30$ share to Alope Kumar Das (Defendant No. 2). Thus, Alope Kumar Das became the owner of $11/30 + 1/30 = 2/5$ th undivided share in the suit property. Sureswar Das who was the owner of 1/6th undivided share in the suit property died intestate as bachelor leaving him surviving his brother Saileswar Das, Soumen Das and Pramila Manna as his only legal heir and legal representatives to inherit the estate left by the deceased and the two brothers and one sister got 1/18th undivided share in the suit property after demise of Sureswar Das. Soumen Das who was the owner of $(1/6 + 1/18)$ th = 2/9th share in the suit property died intestate on 2005 as bachelor and after his demise his undivided 2/9th share devolved upon his surviving brother Saileswar and surviving sister Pramila Manna in equal share i.e., each having 1/9th undivided share each in the suit property. Pramila Manna became the owner of 1/6th share and she inherited 1/18th from Sureswar and 1/9th from Soumen Das totalling 1/3rd share in the suit property. Suniti Bala Das predeceased her father and mother and after the death of her parents her heirs Jayanta Kumar Das (Plaintiff No.1) and Baidyanath Das (Plaintiff No. 2) jointly became the owner of 1/9th share in the suit property and their sister Smt. Dipali Pal being defendant No. 10 became the owner of 1/18th share in the suit property. Thus, the defendant No.s 2(a) to 2(c) prayed for necessary changes in the preliminary decree.

The Ld. Advocate on behalf of the plaintiffs conceded to the submission made by the Ld. Advocate on behalf of defendant Nos. 2(a) to 2(c).

Heard. Perused the available materials on record. Considered.

Admittedly in the present suit judgment has been delivered in preliminary form on 06.12.2024 and preliminary decree was passed on 10.12.2024 declaring that

plaintiffs have jointly inherited 1/9th share in respect of the suit property and defendant No. 2 has 2/5th share and defendant No. 10 has 1/18th share in respect of the suit property.

The decree has not been challenged before Appellate Forum by any of the parties.

Now admittedly, Ramendra Krishna Das was the original owner of the suit property. He died intestate in the year 1965 leaving him surviving his wife Nirmala Nalini Das and his four sons and two daughters. Thereafter, Nirmala Nalini Das expired in the year 1992. Out of their four sons and two daughters, Suniti Bala Das predeceased her parents and she died on 28.07.1962 leaving her sons and daughters. Thus, after demise of Ramendra Krishna Das and his wife the property left by said deceased devolved upon his four sons namely, Sunil Kumar Das, Saileswar Das, Sureswar Das, Soumen Das and two daughters viz. Pramila Manna and upon the legal heirs of the predeceased daughter Sunita bala Das who equally became the owner of 1/6th share each in the property.

Thereafter, Sunil Kumar Das expired on 1995 leaving behind his wife Pranati Das who was defendant No. 1 and one Alope Das who was defendant No.2 and three daughters viz. Jayanti Mondal, defendant No. 3 Sujata Pramanik, defendant No. 4 and Sunita Hazra, defendant No. 5 in this suit who after demise of Sunil Kumar Das inherited 1/30th share each in the suit property. Thereafter, by executing a deed of gift dated 26th Falgun 1412 B.S. corresponding to 11th March, 2006 Saileswar Das and Pranati Das transferred their $1/30 + 1/3 = 11/30$ share to Alope Kumar Das (Defendant No. 2). Thus, Alope Kumar Das became the owner of $11/30 + 1/30 = 2/5$ th undivided share in the suit property. After demise of Alope Kumar Das his legal heirs Mousumi Das (defendant No. 2(a)) , Rupam Das(defendant No. 2(b)) and Purba Bagchi being defendant No. 2(c) were substituted in place of defendant No.2, since deceased. ***Thus, defendant No.s 2(a) to 2(c) jointly got 2/5th share in the suit property.***

Jayanti Mondal (Defendant No. 3) got expired leaving behind Nupur Chowdhury (Defendant No. 3(a)) and Sarbani Roy (Defendant No. 3(b)). Thus, they inherited the 1/60 th share each after demise of Jayanti Mondal who inherited 1/30th share from Sunil Kumar Das. After demise of Nupur Chowdhury (Defendant No. 3(a)) her 1/60th share devolved upon her two daughters namely 'Hriti Chowdhury' and 'Aarna Chowdhury' being minor represented by her natural guardian/father Prasun Chowdhury. ***Thus, 'Hriti Chowdhury' and 'Aarna Chowdhury' being defendant No. 3(a)(i) and defendant No. 3(a)(ii) got 1/120th share each in the suit property.***

Thus, Sarbani Roy(defendant No. 3(b)) got 1/60th share in the suit property.

Sujata Pramanik (defendant No.4) and Sumita Hazra (defendant No.5) each got 1/30th share in the suit property.

Sureswar Das who was the owner of 1/6th undivided share in the suit property died intestate as bachelor leaving him surviving his brother Saileswar Das, Soumen Das and Pramila Manna as his only legal heirs and legal representatives to inherit the estate left by the deceased and the two brothers and one sister got 1/18th undivided share each in the suit property after demise of Sureswar Das.

Soumen Das who was the owner of $(1/6 + 1/18)$ th = 2/9th share in the suit property died intestate on 2005 as bachelor and after his demise his undivided 2/9th share devolved upon his surviving brother Saileswar and surviving sister Pramila Manna in equal share i.e., each having 1/9th undivided share each in the suit property. Pramila Manna became the owner of 1/6th share and she inherited 1/18th from Sureswar and 1/9th from Soumen Das totaling 1/3rd share in the suit property.

Promila Manna being one of the daughters of Ramendra Krishna Das got 1/3rd share in the suit property. After her demise her 1/3rd share devolved upon Anima Roy, Anita Manna, Anjali Mondal and Aruna Mukherjee i.e., defendant No.s 6 to 9 respectively. Upon demise of the defendant No.s 6, 7 and 8, Aruna Mukherjee(defendant No. 9) and Arnab Mondal (legal heir of defendant No. 8) became the co-owner in respect of 1/3rd share of the suit property. ***Thus, Arnab Mondal being defendant No. 8(a) and defendant No. 9 each got 1/6th share in the suit property.***

Suniti Bala Das predeceased her father and mother and after the death of her parents her heirs Jayanta Kumar Das (Plaintiff No.1) and Baidyanath Das (Plaintiff No. 2) jointly became the owner of 1/9th share in the suit property and their sister Smt. Dipali Pal being defendant No. 10 became the owner of 1/18th share in the suit property. ***Thus, Plaintiff No. 1 and 2 jointly became the owner of 1/9th share and defendant No. 10 became the owner of 1/18th share in the suit property. Since defendant No.10 got expired and she has been substituted by Subhankar Pal (defendant No. 10(a) he inherited 1/18th share of defendant No.10, since deceased.***

Thus, in view of the above observation the preliminary decree drawn on 10.12.2024 is hereby modified.

The application filed by defendant No. 9 is accordingly disposed of.

Hence, it is

ORDERED

that it is hereby declared that the plaintiffs have jointly inherited 1/9th share in respect of the suit property and the defendant No.s 2(a) to 2(c) have jointly 2/5th share in the suit property, defendant No. 3(a)(i) and defendant No. 3(a)(ii) got 1/120th share each in the suit property, defendant No. 3(b) got 1/60th share in the

suit property, defendant No.4 and defendant No.5 each got 1/30th share in the suit property, defendant No. 8(a) and defendant No. 9 each got 1/6th share in the suit property, defendant No. 10(a) got 1/18th share in the suit property.

The parties to this suit are hereby directed to make partition by metes and bounds within 30 days from this date i.d. the parties are at liberty to file appropriate application for execution of decree by appointment of a survey passed commissioner.

Let a second preliminary decree be accordingly drawn up.

D.A to do the needful.

D/C by me,

Civil Judge (Sr. Divn.),
SCC Sealdah

Civil Judge (Sr.Divn.),
SCC Sealdah

Later,

Plaintiffs have filed revised plaint. Let the same be kept with the case record.

D/C by me,

Civil Judge (Sr. Divn.),
SCC Sealdah

Civil Judge (Sr.Divn.),
SCC Sealdah