

W.B.F.No.-3701

HEADING OF JUDGEMENT IN ORIGINAL SUIT/CASE

DISTRICT : SOUTH 24-PARGANAS.
 IN THE COURT OF : SMALL CAUSES COURT, SEALDAH, 24-PGS.(S).
 PRESENT : SRI ANNADA SANKAR MUKHOPADHYAY, JUDGE,
 SMALL CAUSES COURT, SEALDAH, 24-PGS.(S).

Saturday, the 18th day of June, 2016.

TITLE SUIT NO 89 OF 2015
 [CIS Registration No. 39 OF 2016]

SRI SACHINDRA KUMAR ROY Plaintiff(s)Petitioner(s)
 VERSUS
SRI BIRENDRA KUMAR ROY &
2 others Defendant(s)/Opposite Party(s)

Give date 07.06.2015. The suit/case coming of date on for final hearing on
 in the presence of

Sri. Om Prakash Sharma - Advocate(s) for Plaintiff(s)
 Sri Tapan Kr. Basu Pleader(s) Petitioner(s)

Sri Sasanka Sekhar Das - Advocate(s) for Defendant(s)
 Pleader(s) Opposite Party(s)

and having stood for consideration to this day, the court delivered the following judgement.

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This is a suit for partition valued at Rs.2,00,000/-.

The background facts of the plaintiff in short spectrum so appears from the plaint is that Smt. Nani Bala Roy, mother of the plaintiff and defendants, was the absolute owner of the premises no. 21B/1 Lala Babu Lane, P.S Chitpur, Kolkata 700002 referred as Schedule A Property and of the premises no. 12, Nirmal Sengupta Sarani, P.S Dumdum, Kolkata 700 079 described as Schedule B property (hereinafter referred as "Suit Property"). Smt Nani Bala Roy was wife of Sri Dharendra Kumar Roy who was the father of the parties to the suit. After demise of said Nani Bala Roy and after death of her husband, plaintiff and defendants being her only legal heirs inherited 1/4th share each of the undivided suit property. Their names in respect to the suit property were accordingly mutated in the records of the respective municipal corporations. Plaintiff is residing at the 1st floor of the A Schedule Property and defendant no.4 (sic) is residing at the ground floor of the A Schedule Property. After taking permission from Kolkata Municipal Corporation, plaintiff demolished a part of the said property and raised construction over B Schedule Property (sic) at his own cost and expenses.

According to the plaint, defendant no. 1 and 2 are in possession of the B Schedule Property construction of which was held during the life time of their mother from the joint fund of the parties. Plaintiff is a senior citizen and is suffering from age related illnesses, requested the defendants for amicable partition of the suit property and several meetings did held amongst them but plaintiff apprehends that the defendants are taking tactics of making delay and ultimately on the meeting dated 15th July, 2014, denied about making partition of the suit property amicably by metes and bounds. Plaintiff having no other alternative course, filed the instant suit for partition praying for partition by metes and bounds with a declaration of the respective shares of the parties over the suit property and consequential relief. According to plaintiff, cause of action arose on 15th July, 2014 at the Schedule A Property.

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After receipt of the summons, defendants appeared and filed their joint written statement, contending inter-alia, setting apart the evasive denials, that another property, i.e. family business being Sylhet Lime Supply Company was not made subject matter of the partition suit. They admitted the equal share of the parties over the suit property but claimed that the said business should be made part of and subject matter of the suit. They contended that they demanded the partition of the said family business but the plaintiff denied and avoided the said claim of the defendants. They prayed for dismissal of the suit.

ISSUES

On the basis of the pleadings of the both sides, following issues were framed:

1. Is the suit maintainable in its present form and prayer?
2. Has the plaintiff any cause of action to file the instant suit?
3. Is the suit barred due to non-joinder of the necessary party?
4. Is the plaintiff co-sharer in respect to the suit property?
5. Is the plaintiff entitled to the decree as prayed for?
6. What other relief the plaintiff is entitled to get by law and equity?

WITNESSES & DOCUMENTS IN SUPPORT TO THE FACTS

To prove the contention and the case plaintiff adduced himself as PW1 as per provision of order 18 rule 4 C.P.C. He produced and formally proved registered partnership deed dated 21st March, 1963 (Exhibit 1), original application for registration before the Shop and Establishment Department of Government of West Bengal (Exhibit 2), original Trade License of 2013-2014 of the partnership business (Exhibit 3). Documents of Sylhet Lime Supply Company produced by plaintiff and admitted by the DWI was marked as Exhibit 4 collectively.

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Challenging the case of the plaintiff, defendants adduced Defendant no.1 as DW1 and Defendant no.2 as DW2 by filing their respective Examination-in-chief on Affidavit but did not adduced defendant no.3. However they did not produce any document in support of their contentions. One photocopy of decision dated 08.11.2012 was marked as Exhibit A on admission.

After the recording of evidence is closed, plaintiff submitted his argument and defendants were given opportunity to file written argument since they failed to present argument on that date. Defendants submitted their written argument.

DECISION WITH REASONS

Issue nos. 1 to 3:

All these issues are taken together for the sake of brevity and convenience in discussion.

The defendants did not raise these issues in specific manner in written argument. In consideration to the pleadings and the evidences tendered by the parties, this court did not come into conclusion as regard to the non-maintainability of the suit or the lack of cause of action. It also does not appear from the pleadings and the evidences that any of the legal heirs of the suit property are left out in this suit or not made party to it. Therefore these issues are decided in favour of the plaintiff.

Issue no.4:

Plaintiff contended that all the parties to the suit are entitled to equal share of the suit property and the defendants did not raise any objection to such contention, rather admitted the same in their written statement. In due consideration of the evidence it is not necessary to reiterate that the plaintiff is a co-owner/co-sharer of the suit property together with the defendants. Therefore this issue is decided in favour of the plaintiff.

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Issue nos. 5 to 6:

The contention of the plaintiff is over the claiming of his right on the suit property and the defendants admitted such right. The contention of the defendants is that the Sylhet Lime Supply Company is their family business and they are entitled to have share on the said business and that should be made as subject matter of the suit. Irony is that the defendants did not file any counter claim on such demand.

Plaintiff in the course of evidence submitted Exhibit 1, the Partnership Deed of 1963. From consideration of the said document it appears to this court that it was executed between Bireswar Roy and Sachindra Kumar Roy, the defendant no.3 and the plaintiff herein in respect to Sylhet Lime Supply Company. On perusal and consideration of this document it is very much clear that it is their joint venture and have no involvement, role or taking part of the other family members or third party in the said business. Exhibit 2 and 3 corroborates the said facts. From these documents there is no room to support the idea that this business is a family business of the parties and requires to be included in to common hotchpotch of subject matter of this suit. It appears from the evidence that said business was initially a sole proprietorship business of the plaintiff and later on it was converted to partnership business. In consideration of the evidence so produced by the parties to the suit, this court has no hesitation to hold that this is not subject to partition amongst the parties to the suit and the view and contention of the defendants to that effect is not at all acceptable.

It is interesting to note that the DW1 during his cross examination stated that Sylhet Lime Supply Company is the business of the plaintiff and defendant no.3 and he has no document to show that the said business was their family business. DW2 also corroborated the evidence of DW1 in same line and denied their own contention that the said business is their family business and required to be partitioned. The Exhibit 4 has no value in this circumstances when the

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defendants admitted the contentions of the plaintiff.

On the basis of the evidence of the plaintiff and the admissions made by the defendants, it appears that the plaintiff has reasonable cause to get the suit property partitioned by metes and bounds and there is no just and satisfactory reason to include the Sylhet Lime Supply Company in the said partition by metes and bounds. It further appears that the plaintiff and defendants are entitled to get 1/4th share each of the suit property through partition by metes and bounds. Thus these issues are decided in favour of the plaintiff. Accordingly plaintiff is entitled to get the decree as prayed for.

Court fees paid are correct.

Hence, it is,

ORDERED

that the Suit be and the same is decreed in its usual preliminary form on contest against the defendants without costs.

It is hereby declared that the plaintiff and the defendants have got undivided 1/4th share each in respect of the suit schedule property as mentioned above on the body of the judgment.

The parties are directed to make partition of the suit property amicably within six months from the date of the order in terms of the share declared in the preliminary decree, failing which either of the parties will be at liberty to make partition through Court as per law.

D/Corrected by me

Judge. SCC, Sealdah

Judge, Small Causes Court

Sealdah