

HIGH COURT FORM NO.(J)2
HEADING OF JUDGEMENT IN ORIGINAL SUIT/CASE
DISTRICT : South 24-Parganas

IN THE COURT OF THE ACJM
CUM
CIVIL JUDGE, (SR. DIVN.), KAKDWIP

PRESENT : **Sumana Garain,**

ACJM CUM CIVIL JUDGE, (SR. DIVN.), KAKDWIP

UID-WB01068

28th Day of April, 2026

TITLE SUIT No. 171 of 2019

CIS 71/19

CNR No. WBS17-002155-2019

Bhagabati Bala Pal.... . Plaintiff (s)/ Petitioner (s).

-VERSUS-

Sachin Pal and others....Defendant (s) / Opposite Party.

The Suit/ Case coming up for final hearing on 17.02.2026, 21.02.2026 and 09.04.2026

in presence of

Radhakrishna Mondal..... Advocate(s) for plaintiff (s) Pleader(s)

Tapan Kumar Guria..... Advocate(s) for Defendant (s) Pleader(s)

And having stood for consideration to this day, the Court delivered the following judgment.

Prelude :

This suit is for declaration of title, partition and injunction which was filed by Bhagabati Bala Pal against Sachin Pal and others. The suit is valued at Rs. 1, 50,100/-.

Brief synopsis of the case:

The factual matrix of the plaintiff's case is that the suit property being CS and RS khatian no. 331, CS plot no. 1529/1780 measuring 66 decimal, out of which 22 decimal of land with specific boundary land was sold to Bhusan Chandra Pal, Gurupada Pal, Bibhuti Bhusan Pal by the original owner namely Kanailal Makal and Balaram Makal by dint of sale deed no. 2068 dated 07.04.1956. However due to the mistake of the deed writer the plot no. 1529 was written in place of 1529/1780. The CS plot no. 1529/1780 became RS plot no. 1529/1780, 1529/1793 and 1529/1794, total area 66 decimal.

Each of Bhusan Chandra Pal, Gurupada Pal, Bibhuti Bhusan Pal got 1/3rd share i.e. $7\frac{1}{3}$ decimal each. But the RS suit plot no. 1529/1793 was wrongly recorded only in the name of Gurupada Pal in stead of those three persons. Bhusan Chandra Pal sold his 1/3rd share i.e. $7\frac{1}{3}$ decimal of land to the plaintiff by dint of sale deed no. 6779 dated 10.06.1959. Since then the plaintiff is in possession at his land. However due to the mistake of the deed writer the plot no. 1529/1780 is written as 1529 in the said deed being no. 6779. Both the plaintiff and defendant are the co-sharers of the suit property and the suit property is not partitioned amongst them. The defendants have been threatening to dispossess the plaintiff and trying to grab more land than his share of the suit plot. The defendant refused to partition the land amicably. As a result the plaintiff has filed the suit for partition. The cause of action arose on 24.07.2019.

The plaintiff has prayed for decree of declaration of title in respect of $7\frac{1}{3}$ decimal of land of the suit property, partition and permanent injunction upon the defendants and other reliefs.

Defendants' Case:

Defendants nos. 1 to 5 are contesting the suit by filing written statement. Other defendants have not turned up to contest the suit in spite of due service of summon. As a result the suit is heard ex parte against them.

The brief fact of the case of defendant nos. 1 to 5 the total area of the CS plot no. 1529/1780 is 66 decimal which is recorded in the CS and RS khatian no. 331.

The original owner namely Kanailal Makal and Balaram Makal sold 22 decimal of land out of 66 decimal of land with specific boundary to three brothers namely Bhusan Chandra Pal, Gurupada Pal, Bibhuti Bhusan Pal by dint of sale deed no. 2068 dated 07.04.1956. However due to the mistake of the deed writer the plot no. 1529 was written in place of 1529/1780. The CS plot no. 1529/1780 became RS plot no. 1529/1780 area 22 decimal, 1529/1793 area 22 decimal and 1529/1794 area 22 decimal, total area 66 decimal. Each of Bhusan Chandra Pal, Gurupada Pal, Bibhuti Bhusan Pal got $1/3$ rd share i.e. $7\frac{1}{3}$ decimal each. But the RS suit plot no. 1529/1793 was wrongly recorded only in the name of Gurupada Pal in stead of those three persons. They amicably partitioned their share for the purpose of the cultivation and thus Bhusan Chandra Pal was possessing the northern portion, Gurupada Pal was possessing the middle portion and Bibhuti Bhusan Pal who are the predecessor in interest of the defendant nos. 1 to 5 was possessing the southernmost portion of the suit property. Later on Bhusan Chandra Pal sold his $1/3$ rd share i.e. $7\frac{1}{3}$ decimal of land to the plaintiff. Gurupada Pal sold his $7\frac{1}{3}$ decimal of land to one Kamalabala Pal. Bibhuti Bhusan Pal died leaving behind three sons and two daughters who are the defendants nos. 1 to 5. No cause of action arose on 24.08.2019. Defendants have prayed for separate allotment in respect of $7\frac{1}{3}$ decimal of land of the suit property if the plaintiff gets any decree of partition.

Issues

1. Is the suit maintainable in its present form and prayer?
2. Is there any cause of action to file the instant suit ?
3. Is the suit bad for non-joinder of necessary parties ?
4. Are the plaintiff and defendants owners of the property described in the schedule of the plaint ?
5. To what extent the plaintiff has share if any, in the suit property ?
6. Is the suit bad for partial partition ?
7. Is the plaintiff entitled to the releif as prayed for ?
8. What other relief or reliefs the plaintiffs are entitled to get ?

Witnesses Examined by the Parties:

By the Plaintiffs

1. PW-1 : Bhagabatibala Pal (Plaintiff)
2. PW-2 : Pravakar Bar

By the Defendants

1. DW-1 : Sachin Pal (Defendant)

Documents relied on by the parties

By the plaintiff

Serial No.	Nature of document	Exhibit No.	Admission/	date

			objection	
1	CS and RS khatian no. 331	1	On admission	
2	Original sale deed being no. 2068 of 1956	2	On admission	
3.	Certified copy of deed no. 6779 of 1959	3	On admission	

DECISION WITH REASONS

Issue Nos. 1, 2, 3 and 6:

The above issues have taken together for the purpose of brevity and convenient discussion of the issues.

This is a suit for partition and injunction and the suit is of civil nature and not barred by any other law for the time being in force.

Admittedly the plaintiff and the defendants are the co-sharer of the suit property. The plaintiff adduced in evidence the CS and RS khatian no. 331 and the title deeds by which she obtained her title. None of the documents are challenged by the defendants. Even the defendants admitted in the written statement that the suit plot no. 1529 was written in place of 1529/1780 in the title deed of the plaintiff due to the mistake of the deed writer.

The plaintiff has stated that she is facing inconvenience in joint possession of the property on the other hand the defendants have not denied the same. The plaintiff being the co-sharer has a right to demand partition. So, it is evident that the parties are at issue, hence, there is a valid cause of action to file this instant suit.

During argument the defendants have not pressed issue of non-joinder of parties and the issue of partial partition.

Hence, issue nos. 1, 2, 3 and 6 are decided in favour of the plaintiff.

Issue Nos. 4 and 5 :

These issues are taken up together for the purpose of brevity and convenience.

During argument Id advocate of the both parties admitted that plaintiff and defendants are the co-sharers of the suit property.

It is admitted that the suit plot previously belonged to one Kanailal Makal and Balaram Makal. The plaintiff has adduced in evidence that RS khatian no. 331 (Exhibit-1) from which it appears that the suit property being RS plot no. 1529/1793 was recorded in the name of Gurupada Pal. However both plaintiff and defendants have admitted that the suit property should have been recorded in the name of all three brothers namely Bhusan Chandra Pal, Gurupada Pal and Bibhuti Bhusan Pal. The plaintiff has also adduced in evidence their title deed being no. 2068 of 1956 which is marked here as Exhibit-2.

The plaintiff is examined as PW1 in this case. PW1 has adduced some documents in evidence including her title deed. It appears from the certified copy of deed no. 6779 of 1959 (Exhibit-3) that the plaintiff purchased 7 1/3 decimal of land of plot no. 1529 measuring 22 decimal from Bhusan Chandra Pal . It is admitted by the defendants that due to the mistake of the deed writer the plot no. 1529/1780 is written as 1529 in the title deed of the plaintiff being no. 6779 of 1959.

During cross-examination PW1 stated that the suit property originally belonged to Bhusan Chandra Pal, Gurupada Pal and Bibhuti Bhusan Pal. PW1 has further stated that Bibhuti Bhusan Pal is the father of defendants no. 1 to 5 and after death of Bibhuti Bhusan Pal defendants no. 1 to 5 are possessing the suit property.

The defendants have not adduced any documentary evidence. But defendant no. 1 has examined himself as DW1 in this case. During cross-

examination DW1 stated that the suit plot being RS 1529/1793 measuring 22 decimal was purchased property of Bhusan Chandra Pal, Gurupada Pal and Bibhuti Bhusan Pal. It also appears from his cross-examination that Gurupada Pal was possessing the middle portion of the suit property, their predecessor in interest Bibhuti Bhusan Pal used to possess the southernmost portion of the suit property and accordingly the parties have been possessing the suit property and cultivating the same.

It is evident from Ext.-1 that suit property 1529/1793 measuring 22 decimal is recorded in RS khatian no. 331. The said khatian number is mentioned in the title deed of the plaintiff (exhibit-1). It is the case of the plaintiff that in her title deed no. 6779 of 1959 the suit plot number is wrongly written as 1529 in place of RS plot no. 1529/1793 which is a merely clerical mistake.

It was decided in P.Udayani Devi Vs V.V.Rajeshwara Prasant Rao and another reported in AIR 1995 SC 1357 that where both the boundaries and plot numbers were given and there was a mistake in the plot number, it must be treated as a mere misdescription which does not affect the identity of the property sold.

In view of the above judgment and on careful perusal of the exhibited documents adduced by the plaintiff, I am of the view that the mistake in writing the plot number in the title deed of the plaintiff and her predecessor in interest does not affect her title in respect of the suit property. So it can be said that plaintiff has been able to prove her title to the extent of $7\frac{1}{3}$ decimal of land of the suit property.

It is admitted that the defendants no. 1 to 5 are the legal heirs of Bibhuti Bhusan Pal. It appears from the Exhibit-2 that he was the owner to the extent of $7\frac{1}{3}$ decimal of land by way of purchase. Admittedly the above mentioned deed the suit plot number is mentioned as 1529 in place of original CS plot no. 1529/1780. Both the predecessors in interest of the plaintiff and defendants have derived their title over the suit property by dint of the deed no. 2068 of 1956 (Exhibit-2). So it can be said that the defendants have also been able to

prove their right, title and interest over the suit property to the extent of $\frac{1}{3}$ rd of the suit property i.e. $7\frac{1}{3}$ decimal of land over the suit property.

Accordingly plaintiff is entitled to get a decree of declaration of title, partition in respect of $7\frac{1}{3}$ decimal of land over the suit property.

Hence, issue nos. 4 and 5 are decided in favour of plaintiff.

Issue No. 7 and 8:

I have already decided that both the plaintiff and defendant have right, title and interest over the suit property and I have decided the quantum of the share of the plaintiff and defendant. Accordingly the plaintiff is entitled to get a decree of declaration of tile in respect of her share over the suit property. Similarly the defendants no. 1 to 5 are also entitled to get separate allotment of their share. On perusal of Exhibit-1 it appears that the classification of suit property is 'sali', hence it is partible.

Hence, the plaintiff is entitled to the relief as prayed for however the plaintiff is not entitled to any other relief or reliefs in any other law for the time being in force.

In the result the suit succeeds.

The Court fees paid on the plaint is correct.

Hence, it is,

ordered

that the suit be and the same is decreed on contest in usual preliminary form on contest against defendants no. 1 to 5 and ex parte against other defendants.

It is hereby declared that the plaintiff is the owner to the extent of $7\frac{1}{3}$ decimal of land in respect of RS plot no. 1529/1793 out of total 22 decimal of land.

It is hereby declared that the defendants no. 1 to 5 are the owner to the extent of $7\frac{1}{3}$ decimal of land in respect of RS plot no. 1529/1793 out of total 22 decimal of land.

The parties to the suit are directed to effect partition in respect of RS plot no. 1529/1793 which is partitiable, amicably in accordance to their share as declared above within 2 months from this date of delivery of judgment in default either of the parties shall be entitled to apply for appointment of a Pleader Commissioner for the purpose of effecting partition of the suit property by meets and bounds. The commissioner so appointed, shall effect the partition, keeping in view the present possession of the parties, compactness of allotment there and other equitable principle, as far as practicable.

The parties to the suit are also directed to maintain their respective possession in the suit properties till partition is effected by metes and bounds.

There is no order as to cost.

Dictd. & Cortd. by me :

Sd/-

Additional Chief Judicial Magistrate -
cum- Civil Judge,(Senior Division),
Kakdwip, South 24 Parganas.

Sd/-

Additional Chief Judicial Magistrate
cum-Civil Judge,(Senior Division)
Kakdwip, South 24 Parganas.