

OD – 3, 4

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

IA NO. GA/49/2013 (Old No: GA/1817/2013)
In CS/2706/1955
SM. GOURI SIRKAR & ORS

Vs

SMT. SUDESHNA SIRKAR & ORS

IA NO. GA/64/2023
In CS/2706/1955
SMT. GOURI SIRKAR & ORS./BROJESWAR SIRKAR

Vs

SUDESHNA SARKAR & ORS

BEFORE:

THE HON'BLE JUSTICE SUGATO MAJUMDAR

Date: 7th October, 2024

Appearance:

Ms. Atasi Sarkar, Adv.

Ms. S. Datta, Adv.

...for Plaintiff no. 2 (c).

Mr. Anirban Bose, Adv.

Mr. Jaydeep Dhar, Adv .

...for Defendant no. 1(g) & (h).

Mr. Ananda Prosad Ghosh, Adv.

...one of the Joint Receivers.

The Court: GA No. 64 of 2003 is filed by the Defendant No. 1(E) Smt. Anima Sirkar praying, *inter alia*, for deletion of the name of the Defendant Nos. 6 & 7 from the array of the parties, deletion of the properties mentioned in Schedule I of the

plaint, being item nos. 5, 6, 7, 8, 9, 10, 11, 16 and 17, set out in Para.17 of the plaint consequential direction for proposed amendment of the plaint along with other related prayers.

This partition suit has been filed praying for partition by metes and bounds of the estate of late Manmoth Bhushan Sirkar, since deceased. Preliminary decree was passed on 19.09.1960. Prior to passing of the preliminary decree this Court appointed Receiver in respect of the properties and on 01.05.1956 passed order restraining the parties from transferring or selling the business of the Defendant No. 5. Defendant No. 6, M/s M.B. Sirkar & Sons (sons & grandsons of late B. Sirkar) is a private limited company registered under the Indian Companies Act 1913, having registered office at 124 & 124/1, Bowbazar Street, Calcutta. Defendant No. 7 is M/s Sirkar Estate Ltd. a private limited company incorporated under the Indian Companies Act, 1913, having registered office at 34A & 34B, Sashi Bhushan Dey Street, Kolkata.

In the preliminary decree it was observed that the business of the Defendant No. 6 is in the nature of joint family business. The immovable properties were in the nature of leasehold properties and those are not part of joint family assets. Such properties cannot be subject matter of the present partition suit; no final decree can be passed in respect thereof. In terms of two orders dated 17.06.2011 and 17.12.2013, Co-ordinate Benches of this Court directed sale of the properties mentioned as item no. 5, 6, 7 and 8 of the plaint. These properties are:

1. 34A & 34B, Sashi Bhushan Dey Street, Kolkata;
2. 4, Santosh Mitra Square, Kolkata;
3. 8/1, Nebutal Row, Kolkata;

4. 167/1 & 167/1C, Bowbazar Street, Kolkata.

In terms of order dated 04.03.1960, this Court passed order of winding up of the Defendant No. 7 in C.P. No. 206 of 1960. By the Order dated 16.09.2011, this Court recorded completion of the liquidation proceeding of the Defendant No. 7. Prior to liquidation, Defendant No. 7 had the following properties:

1. 44, Mott Lane (item no. 9)
2. 33, Dharmatala Street (item no. 10)
3. 133A, B, C, Harish Mukherjee Road (item no. 11)
4. Vacant land at Ghatshila, District – Singhbhum (item no. 16)
5. Vacant land at Giridih, District – Singhbhum (item no. 17)

The Defendant No. 6, on the other hand, as averred, had been permanently closed down.

In the conspectus of facts, as stated above, it is prayed that the names of the Defendant No. 6 & 7 be deleted from the array of the parties and the properties mentioned therein be deleted from the schedule of the plaint.

The instant application is opposed by the Defendant No. 2(b)(i). Contentions of the answering respondent are that the application is in attempt to modify the preliminary decree, passed on 19.09.1960, after lapse of more than 62 years which is not warranted by law. It is further contended that the predecessor-in-interest of the applicant Radhanath Sirkar, since deceased, illegally sold the schedule property at Ghatshila (item no. 16) which had all along been part of joint family property. Such sale is under challenge by an application filed in this Court being G. A. No. 1817 of 2013. The applicant had used an affidavit-in-opposition in G.A. 1817 of 2013 wherein

it is stated that the Ghatshila property belong to family properties. Therefore, the present petition is barred by the principles of waiver, estoppel and acquiescence.

Report of the Joint Commissioner of Partition mentioned that the Ghatshila property is a joint family property and that such property is impartible and there should be sale of the said property. On sale, sale proceeds should be distributed among the parties according to their respective shares. Steps were taken for sale and this Court passed necessary orders.

On the basis of an application G.A 3017 of 1998, one of the parties sought an order under Section 340 of the Code of Criminal Procedure and by Order dated 25.11.1998, this Court issued warrant of arrest against the said Radhanath Sirkar, since deceased and his wife, the present applicant, Anima Sirkar. Subsequent orders were passed by this Court in this regard.

It is admitted that properties mentioned in item no. 5, 6, 7 and 8 were sold in the year 2011 under order of this Court. Preliminary decree was directed to be set out accordingly. It is, however, stated that the questions of deletion of the names of the Defendant No. 6 and & from the array of the parties or removal of the properties appearing in item no. 5, 6, 7, 8, 9, 10, 11, 16 and 17 does not arise.

In nutshell, the Defendant No. 2 (b)(i) opposed the application.

Supplementary affidavit is filed by the Petitioner in connection with the instant application.

I.A. No. G.A. 49 of 2013 (Old G.A. No. 1817 of 2013) is filed by the Defendant No. 5 (c) Smt. Dipali Bose praying for cancellation of three indentures made between Samir Kumar Bose, Vendor and three purchasers, namely, Suprakash Majumder,

Sushil Majumder and Jitendra Kumar Shaw on 13.05.2011, mentioned in details in prayer (b), setting aside of sale along with allied and incidental prayers.

It is contended that the instant suit for partition was filed by the two youngest sons and legal heirs of late Manmotha Bhushan Sirkar praying for parties by metes and bounds. Preliminary decree was passed on 19.09.1960. Receivers/Commissioners were appointed successively in the suit. The present Receivers/Joint Commissioners were appointed lastly by Amitva Lala, J. in terms of the Order dated 27.07.1998. It is stated that the estate is heavily burdened with financial liabilities. One of the joint properties mentioned in the preliminary decree is a vacant land situated at Ghatshila in the State of Jharkhand. By an Order dated 21.05.1997, this Court directed the Receiver to take possession of the land and to take appropriate steps to have unauthorized persons removal therefrom.

In the month of April 2013, the present Petitioner came to learn that the said land was fraudulently and surreptitiously sold and transferred to third party in complete violation of the Order dated 21.05.1997. A complaint was made to the Joint Receivers who called a meeting on 06.08.2012. It is prayed, therefore, that the said deeds of sale be cancelled and sale be set aside. It is also contended that the property located at 167, B.B. Ganguly Street, Kolkata – 700012 being a joint family property be sold on “as is where is” basis. It is further contended that once the alleged indentures of sale in respect of the Ghatshila property be cancelled and sales being set aside, the same property be sold through the Joint Commissioners.

Affidavit-in-Opposition is filed by Anima Sirkar, the Defendant No. 1 (e), refuting the contentions of the Petition. It is contended that sale of the properties should be complained to the Commissioner of Partition and not before this Court. It

is further contended that there is one bigha un-demarcated land at Ghatshil which belongs to the family hotchpotch. The Petitioner was not aware of the suit and is also not aware of the dealings of the husband although the Defendant No, 1 (e) denied that any fraudulent or surreptitious transfer took place. She is also not certain whether her husband Radha Nath Sirkar sold such property. It is further contended that the property located at premises no. 167, B.B. Ganguly Street, Kolkata – 700012 does not form part of the joint property since the same was sold by this Court on 14.05.1963 in Suit No. 188 of 1952. The aforesaid property sale certificate was issued. Accordingly, sale of premises no. 167, B.B. Ganguly Street, Kolkata – 700012 is opposed.

Affidavit-in-Reply is filed by the Defendant No. 1 (d) Radha Madhav Sirkar. In the affidavit-in-reply it is contended that the instant application contains blatant falsehood of the Petitioner Anima Sirkar. She was well-aware of the sale of Ghatshila property. The said property was sold by her deceased husband Radhanath Sirkar in terms of deed of conveyance dated 13.06.1991 to one G.S. Land & Estate through one Samir Kumar Bose without obtaining any order of sale from this Court. Ghatsila Property is a joint family property and the deceased Radhanath Sirkar had no right, title or interest to sell the said property. The sale is, therefore, null and void. The extent of perpetrating fraud upon the legal system is manifest, as appears from annexure 'C' a registered power of attorney dated 20.09.2006. It is contended and reiterated that the Ghatshila property is a joint family property. In nutshell, this answering Defendant lends support to the present application.

In GA 49 of 2013, a supplementary affidavit is filed. In the supplementary affidavit, necessary orders are solicited for cancellation and delivery up the indenture dated 13/06/1991 executed between Radhanath Sirkar and Samir Kumar Bose, which

was registered at the office of Jamshedpur as Deed No. 4338 in the year 1991. There were other consequential prayers also. However, the principal prayers are not changed or amended in the main petition. In terms of the main petition, three indentures executed between the purchasers Samir Kumar Bose and three subsequent purchasers are sought to be set aside and cancelled. Any order of cancellation of instrument executed between Samir Kumar Bose on the one hand and subsequent purchasers on the other hand, would directly affect their interests, jeopardizing their rights and title. That order cannot be passed behind their back. Therefore, they should be served with a copy of application and opportunities should be given to them to present their case. Accordingly, the petitioner in GA 49 of 2013 is to serve copy of the application to Samir Kumar Bose, Suprakash Majumder, Sushil Majumder and Jitendra Kumar Shaw.

Issues involved in GA 64 of 2023 are linked to hearing of GA 49 of 2013 and both the applications should be heard together.

Fix 11/12/2024 for further hearing.

(SUGATO MAJUMDAR, J.)