

Bench:  
Mr. Justice Bhishmadev Chakrabortty  
And  
Mr. Justice Md. Akhtaruzzaman

First Appeal No.468 of 2013

Md. Fazal Haque and others .....appellants

-Versus-

Bhelu Mondol being dead his heirs:-

1(a) Md. Salim Mandol and others .....respondents

Mr. Md. Momin Uddin, Advocate  
..... for the appellants

Mr. Md. Ekramul Islam with Mr. Md.  
Nazimuddin, Advocates for Advocate  
Mr. Md. Aminul Haque Helal  
..... for the respondents

Judgment on 07.03.2023

Bhishmadev Chakrabortty, J.

This appeal at the instance of contesting defendants is directed against the judgment and decree of the Joint District Judge, Court No.1, Natore passed on 24.09.2013 in Other Class Suit No.04 of 2004 (Partition) decreeing the suit for declaration of title and partition.

The plaint case, in brief, are that Maheruddin Pramanik was the CS recorded tenant of the land described in schedule 'Ka' to the plaint. He died leaving behind his wife Saminor Bewa and 4 sons Binod Pramanik, Nimai Pramanik, Moni Pramanik and Jiarat Pramanik and 2 daughters Palabi Bibi and Kariman Bibi who inherited their respective shares and used to possess the land in *ejmali*. Subsequently, Nimai Pramanik died leaving behind his wife Sukjan

Bewa, 2 sons Nakur Pramanik and Maharam Pramanik and 3 daughters Nurjahan, Karabi and Masiron and they inherited the share of Nimai. Nakur Pramanik died leaving his mother Sukman, a brother Mohram and 3 sisters Nurjahan, Parabi and Masiron who inherited his *share* and remained in possession. Parabi died leaving behind his mother Chukman and husband plaintiff 1 Delbor Ali and a daughter plaintiff 7. Parabi's son Delbor died leaving his wife plaintiff 8 and 2 sons plaintiffs 9 and 10 and 5 daughters plaintiffs 11-15 and they inherited the share left by Delbor. Thus the share of Parabi was inherited by plaintiffs 1-15 and Chukman Bibi. Nurjahan Bibi died leaving his 2 sons plaintiffs 19 and 20 and 2 daughters plaintiffs 21 and 22 as heirs. Samiran Bewa died leaving his son Jiarat and a daughter plaintiff 16 Kariman. Jiarat died leaving his 2 sons plaintiffs 17 and 18 as heirs and they started possessing the land in *ejmali*. Plaintiffs 16-18 became the heirs of Sabiran's 2 annas share. Plaintiffs 17 and 18 got the land which Jiarat inherited from his parents. Kabiran Bewa also got share from his parents. Chukman Bewa died and his son and daughter plaintiffs 23 and 24 inherited his share. Plaintiffs 19-22, the heirs of Nurjahan and plaintiffs 2-15 the heirs of Parabi inherited their respective shares and started possessing the same in *ejmali*. Palani Bibi died leaving behind only son Ohiruddin as heir. Ohiruddin died leaving his wife plaintiff 25, 4 sons, plaintiffs 26-29 and a daughter plaintiff 30 who inherited the respective shares and

remained in possession. Parabi Bibi, Samiran Bewa, Nurjahan Bibi, Sakiman Bewa, Jiarat Pramanik and Palani Bibi's heirs and Kabiran Bibi are the plaintiffs in this suit. The plaintiffs got the suit land as heirs of Parabi, Nurjahan, Chukman, Jiarat and Kabiran Bewa. In this way the plaintiffs totally got 9 annas 1 gonda 2 Kara 2 Karanti and 2.20 dontis share in schedule-'Ka' land and they have been enjoying the same in *ejmali*. The heirs of Binod Pramanik, Moni Pramanik and Nimai Pramanik have been made defendants in the suit. The heirs of Jinat Ullah son of Binod were made as defendants 6-9. The predecessors of defendants 6(Ka)-6(Chha) transferred .31 acres from plots 530 and 528 of CS Khatian 145 to plaintiff 1. Jinat Ullah further sold .17 acres from plot 117 to the plaintiff 1 through a *kabala* dated 25.09.1946. The predecessor of defendants 6(Ka)-6(Chha) also sold .175 acres to plaintiff 1 through another *kabala* dated 10.09.1952. The predecessor of defendants 6(Ka)-6(Chha) and defendant 7 jointly transferred .22 acres to plaintiff 1 by a *kabala* dated 02.12.1962. In this way plaintiff 1 totally purchased .875 acres. Most of the plaintiffs are the heirs of Maheruddin's daughter. In the previous record of rights a small part of the land has been recorded in the name of the plaintiffs which was erroneous and not as per their shares. The land has never been partitioned by metes and bounds. The defendants refused to partition the land lastly on 02.01.1996 and hence the suit for declaration of title and partition claiming their *saham* to the extent

of 14.595 acres out of 24.23 acres described in the schedule to the plaint.

Defendants 6-7 the contested the suit by filing written statement denying the facts of the plaint. They contended that the suit is barred by limitation and bad for defect of parties. They further stated that the original owner Maheruddin had other lands except the suit land situated at Haludghar and Kuturipara mouja. In Maheruddin's life time his 4 sons started residing separately. Nimai left for his in-laws house after his marriage and started living therein as house husband. After preparation of CS record no crops were grown in the suit land. Meheruddin did not cultivate the suit land and pay rent to the superior landlords and consequently it became khas land of the Zaminder who started settling the same among the tenants. The predecessor of the defendants, Jinat Ullah took settlement of land of CS *khatian* 145 at yearly rent of Taka 41 and  $\frac{1}{4}$  share of CS *khatian* 97 measuring 2.6875 acres at Taka 10 and 2 annas more or less 45-46 years ago and started possessing the same by paying rents to the Government. In this way Jinat Ullah became owner of the total land of CS *Khatian* 145 and  $\frac{1}{4}$  of *khatian* 97 and sold out .17 acres to plaintiff 1 on 25.09.1946. He further sold 3.48 acres to defendant 6 Ramjan. After the death of Jinat Ullah his 2 sons defendants 6 and 7 and daughters defendants 8 and 9 inherited the same and SA record was accordingly prepared in their names. Since SA record in respect of .17 acres has

been prepared in the name of plaintiff 1, he took the plea and filed the instant suit. The plaintiffs also purchased land of the defendants from this *khatian*. The defendants further took *pattan* of 1.47 acres on 20.11.1962 from the Zaminder at yearly rent of Taka 6.00 and have been possessing the same and records have also been prepared in their names. Except the *pattani* land the records in respect of other lands have been prepared in the name of the then Zaminder. The plaintiff did not acquire any land as heirs of Maheruddin. Plaintiff 1 has no land except the land he purchased. In the premises above, the suit would be dismissed.

To adjudicate the matter in dispute the Joint District Judge framed as many as 6 issues. In the trial, the plaintiffs examined 2 witnesses PW1 Maharam Ali and PW2 Jashim Sheikh while the defendants examined 3 witnesses DW1 Samjan Ali Pramanik, DW2 Jashim Uddin and DW3 Nazrul. The documents produced by the plaintiffs were exhibits-1-1(Ta), 2-2(Chha), 3, 4-4(Ka), 5-5(Kha) and 6 and the documents produced by defendants 6 and 7 were exhibits-Ka-Ka(1), Kha-Kha(5), Ga, Gha-Gha(4) and Uma-Uma(9), Cha-Cha(1), Chha-Chha(1), Ja-Ja(1) and Jha-Jha(2). However, the Joint District Judge considering the oral evidence and documents produced before it decreed the suit allocating *saham* to the plaintiffs for 14.54 acres. Being aggrieved by the contesting defendants approached this Court with the present appeal.

Mr. Md. Momin Uddin, learned Advocate for the defendant-appellants taking us through the plaint, written statement, evidence of witnesses and exhibited documents submits that the judgment passed by the trial Court is not in compliance with the provisions of law. The learned Judge did not at all consider the evidence of parties as a whole and without discussing the evidence of the plaintiffs' witnesses decreed the suit and thereby erred in law. He further submits that it is well settled principle that the plaintiffs are to prove their case by adducing reliable evidence. The weakness of defendants' case cannot be a ground to decree a suit. He adds that this is a suit for declaration of title and partition and if the plaintiffs' title is found then the suit for partition may be decreed but here without any findings of title the suit has been decreed. He submits that all the properties of late Maheruddin Pramanik were not brought into *hotch potch* and on that score only the suit ought to have been dismissed. He emphasised on the issue of limitation and submits that SA and RS records have been prepared long ago but the instant suit has been filed in the year 1989 which is hopelessly barred by limitation. The suit is also barred by principle of waiver, acquiescence and estoppel. The Joint District Judge without considering the aforesaid provisions of law decreed the suit and as such it is to be interfered with by this Court in appeal. He refers to the cases of Sheikh Salimuddin vs. Ataur Rahman and others, 43 DLR 18; Golzar Ali Pramanik vs. Saburjan Bewa being dead his

heirs, 6 BLC (AD) 41; Sova Rani Guha alias Sova Rani Gupta vs. Abdul Awal Mia and others, 47 DLR (AD) 45 and Erfan Ali vs. Joynal Abedin Mia being dead his heirs- Golenur and others, 35 DLR (AD) 216 and relied on the *ratio* laid therein.

Mr. Ekramul Islam appearing for Mr. Md. Aminul Haque Helal, learned Advocate for the respondents on the other hand supports the impugned judgment and decree passed by the Joint District Judge. He submits that the suit is not bad for defect of parties because all the recorded tenants and heirs of Maheruddin have been made parties. The defendants although alleged that the suit is bad for defect of parties but they did not specify who were required to be added as defendants. He then submits that all the properties of late Maheruddin and others were brought to the *hotch potch* and as such there is no defect on that score. The claim of the defendants were not proved in the evidence. He refers to the evidence of DW1 and submits that he admitted that the plaintiffs are the heirs of late Maheruddin and they purchased land as such the suit was decreed allocating *saham* to the plaintiffs. He refers to the provisions of the Bengal Tenancy Act and submits that the defendants are to prove that title of Maheruddin Pramanik was extinguished which they did not. In the premises above, the trial Court correctly appreciated the evidence and other materials on record and decreed the suit which may not be interfered with by this Court in appeal. The appeal, therefore, would be dismissed.

We have gone through the material on record, considered the submissions of the learned Advocates for both the parties and *ratio* of the cases cited by the appellants. It appears that the plaintiffs instituted the suit for declaration of title and partition claiming their *saham* to the extent of 14.54 acres out of 24.23 acres as described in schedule 'Ka' to the plaint. In the plaint they claimed 9 annas 1 gonda 2 Kara 1 Karanti and 2.40 donti share measuring an area of 13.72 acres as gradual heirs of Meheruddin and .82 acres by way of purchase. On the other hand the contesting defendants (appellants herein) claimed that the suit land originally belonged to Maheruddin Pramanik and CS record was correctly prepared in his name but subsequently he defaulted in paying rent to the Zaminder and the Zaminder settled the lands to the people. The predecessor of these appellants took *pattan* of land of CS *khatian* 145 at yearly rent of Taka 41.00 and 12 annas and  $\frac{1}{4}$  share of CS *khatian* 97 at an yearly rent of Taka 10.00 and 8 annas before 45-46 years ago. The defendants also took 1.47 acres of plots 170 and 179 of CS *khatian* 97 *pattan* on 20.11.1962 at yearly rent of Taka 6.00. The plaintiffs in evidence successfully proved that they are the gradual heirs of late Maheruddin Pramanik. The genealogy claimed by plaintiffs was not denied and challenged by the defendants firmly. Moreover, it is found from the evidence of DW1 Md. Samjan Ali Pramanik that he admitted that Binod was his grandfather and Maheruddin was the father of Binod and that Meheruddin was the CS



recorded tenant of the suit *jote*. Maheruddin Pramanik had 4 sons and 2 daughters and the sons were Binod, Nimai, Moni, Jiarat and the daughters were Palani and Kabiran. The plaintiffs claimed land as heirs of Binod and others heirs of Meher. The plaintiffs rightly claimed that as heirs of Karabi, Samiran, Nurjahan, Sukman, Jiarat and Palani Bibi they are entitled to the share of 9 annas 1 gonda 2 kara 1 karanti and 2.40 donti measuring 13.72 acres from the schedule suit land and .82 acres through *kabalas*. The findings and decision of the trial Court in this regard is based on evidence and materials on record. The claim of the defendants that they took *pattan* of the suit land by 2 separate *pattans* 45-46 years ago and another *pattan* in the year 1962 has not been proved by oral and documentary evidence. The defendants did not mention whether the *pattanamas* were oral or documentary. They did not produce any *pattannama* to substantiate their claim. For the sake of argument, if the *pattans* are treated as oral on payment rent through the Zaminders, the rent receipt are to be proved by them by examining writer of those or witnesses of *dakhilas* or the persons who are acquainted with handwriting of the Nayeb of the Zaminder's *seresta*. On going through exhibits Ga-Ga(1) it is found that the *dakhilas* showing the payment of rent do not attract the quantum of land claimed by the defendants and amount of money paid. The other Government rent receipts also do not attract the total land described in the schedule to the plaint.

After preparation of SA and RS record it is usual that the rent should be paid as per the record of rights which has prepared in the names of the defendants erroneously. The claim of the plaintiffs are that the SA and RS record have been prepared wrongly showing less land in their names than they are entitled to. The Government rent receipts in the name of defendants, if any, do not confer their title over the whole land. The defendants are cosharer in the suit land, if they are heirs of Meheruddin, but in the suit they did not pray for *saham* rather prayed for its dismissal. So although they are found co-shares their *saham* cannot be allocated for want of their prayer by paying required Court fees. The claim of the plaintiffs though purchase deeds which were duly exhibited were not challenged by the defendants as per law rather it was more or less admitted in their written statement.

The defect of parties as claimed by the defendants was subsequently cured by amendment of plaint. The objection raised by the defendants that all the properties of late to Maheruddin were not brought into *hotch potch* was not proved by the defendants which they were bound to do. The point of limitation as has been argued by the learned Advocate for the appellants that since the SA and RS record has been prepared long ago, the suit filed in the year 1989 is barred by limitation cannot be accepted because this is a suit for partition and in the plaint as well as in the evidence the defendants claimed that the wrong record of rights has come to their knowledge subsequently and

the defendants refused to partition of the suit land on 15.04.1989. Therefore, I find no substance in the submission the learned Advocate for the appellants. The cases as referred to by him do not match this case considering the facts upon which the *ratio* have been laid.

The trial Court correctly appraised the evidence of the witnesses and decreed the suit for declaration of title and partition allocating *saham* to the plaintiffs for 14.54 acres. We find nothing wrong in the impugned judgment and decree.

Therefore, this appeal fails and accordingly it is dismissed. However, there will be no order as to costs. The judgment and decree passed by the Joint District Judge, Court No.1, Natore in Other Class Suit No.04 of 2004 (Partition) is hereby affirmed.

Communicate the judgment and send down the lower Court's record.

Md. Akhtaruzzaman, J.

I agree.