

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present :

**The Hon'ble Justice Arindam Sinha
And
The Hon'ble Justice Sugato Majumdar.**

**S.A. 131 of 2014
With
I.A. No.CAN 5 of 2015 (Old CAN 4349 of 2015)**

**Sufal Biswas & Ors.
Vs.
Bahuballav Biswas being dead is
substituted by Manibala Biswas & Ors.**

For Appellants :- Mr. Soumyadeep Biswas, ld. Adv.

For Respondents :- Mr. Partha Pratim Roy, ld. Adv.

Heard On :- 8th September, 2021

Judgment on :- 8th September, 2021

Arindam Sinha, J.: Mr. Biswas, learned advocate appears on behalf of appellants, who were defendants in the suit for eviction of licensee and consequential reliefs. He submits, there was exchange by predecessors-in-interest of plaintiffs and defendants. Suit plot 715 was exchanged with non-suit plot 2704. Then suit plot was partitioned. Appellants are claiming under owner of said plot, which was partitioned and ultimately came to be in their possession. This exchange and thereafter partition were oral transactions, prior to amended section 14 in West Bengal Land Reforms Act, 1955. Plaintiffs' predecessor-in-interest and thereafter themselves have interest in non-suit plot 2704, not suit plot 715. Both Courts below erred in omitting to ascertain date of exchange and partition. He submits further, earlier separate properties were exchanged by family settlement but thereafter again became joint property. He relies on judgment of a Division Bench in **Hemchandra Ganguli v. Matilal**

Ganguli reported in **LX (1933) ILR 1253** to submit, a question is therefore involved in the appeal.

Still further submission is, Supreme Court in **Kartick Chandra Mandal v. Netai Mondal (dead) by Lrs. & Ors.** reported in **AIR 2009 SC (Supp.) 95** said in paragraph 8, in that case, there were specific averments in the plaint as regards partition. Though the High Court, hearing the second appeal, noted that none of the parties made any endeavour to ascertain when alleged partition took place, but it came to abrupt conclusion that partition did not take place prior to introduction of section 14 of the 1955 Act. The basis was not clear and Supreme Court remitted the matter to the trial Court on the issue framed by said Court. In this case the lower appellate Court ought to have directed remand and such question is also involved in this appeal.

Appellants ran their case of exchange at trial, for resistance against eviction. The trial Court found that relevant record says defendants are permissive possessor of suit plot 715. In the judgment there was reference to Transfer of Property Act, 1882, in which section 118 provides for exchange. The provision clearly makes completion of exchange to be made in manner provided for transfer of such property by sale. Appellants failed to establish exchange duly made in respect of the plots. They could not also produce any record of possession on exchange.

Section 14 in the 1955 Act provides for partition and not exchange. In **Hemchandra Ganguli** (supra) the Division Bench said, inter alia, below extract relied upon by Mr. Biswas.

“It is to be noticed further that there cannot be any doubt that property, which was originally self-acquired, may become joint property, if it has been voluntarily thrown into the joint stock with the intention of abandoning all separate claims upon it. The question, whether there was abandonment of separate claim or not, is entirely one of fact, to be decided in the light of all the circumstances of the case; a clear intention to waive separate rights must, however, be established and will not be inferred from acts attributable to various causes.”

There was no case made in either Court below that the suit and non-suit plots were initially exchanged, thrown into hotchpot of joint property and subsequently partitioned, for appellants to thereafter claim under the owner of a part. The plots are independent and bear separate numbers. Both Courts have found plaintiffs established their title to suit plot 715 and defendants were permissive occupiers therein. Furthermore, plaintiffs also established that in continuation of the revocation of licence, made by their vendor, they asked defendants to vacate, whereafter the suit was filed.

As aforesaid, section 14 in the 1955 Act provides for partition. The Transfer of Property Act provides for exchange. Properties owned by members of a family can also be settled amongst them. In the case of family settlement between members of a family, separate properties are involved, to be settled amongst the members, on their agreement. Undoing this settlement of the properties, to become joint properties again, would require assertion and proof. This contention is not there on pleading nor proof, as reflected by the judgments. We have already noticed that both Courts found the assertion of exchange was not proved and, it appears, nobody contended on partition.

Regarding the submission based on **Kartick Chandra Mandal** (supra), we can only say that Supreme Court invoked rule 25 in Order XLI, Code of Civil Procedure to remit the case on direction made but in this appeal no question, regarding remand, on the case heard by the lower appellate Court, is involved.

In view of aforesaid, there is no question involved in the appeal, for its admission.

S.A. 131 of 2014 with I.A. no. CAN 5 of 2015 (Old CAN 4349 of 2015) are dismissed.

(Arindam Sinha, J.)

(Sugato Majumdar, J.)