

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FA 121 of 2022
Putul Patra
versus
Sukumar Patra & Others
With
FA 50 of 2023
FAT 18 of 2018
Putul Patra
versus
Nabin Kumar Patra & Others

For the Appellant
(in both the appeals) : *Mr. Amit Baran Dash,*
Ms. Ankana Sarkar.

For the Plaintiffs/
Respondents (in both
The appeals) : *Mr. Soumen Kr. Dutta,*
Mr. Sabyasachi Bhattacharjee.

Hearing is concluded on : *15th March, 2023.*

Judgment On : **3rd April, 2023.**

Partha Sarathi Chatterjee, J.

1. The present appeal has been preferred to assail the judgment and decree passed in preliminary form on 23.12.2020 in a suit for partition *vide*. T.S. no. 116 of 2014 declaring the plaintiff no. 1 and plaintiff no.2 to be

entitled to the share to the extent of 10-5/8 dec. and 22-3/8 dec. respectively, defendant nos. 4(Ka), 4 (Kha) & 5 to be entitled to the share to the extent of 1/3rd jointly and whereas the defendant no. 13 to 19 to be entitled to 1/3rd share of 'Ka' schedule property and also holding that defendant no. 21 is not the daughter of the Prasanna Patra and is not entitled to any share in 'Ka' schedule property.

2. One Sukumar Patra S/o Achintya Patra and one Ajoy Patra S/o Nabin Patra filed one suit for partition. Facts depicted in the plaint, in brief, are as follows:

- i) Raghunath, Dinanath and Srinath Patra each had 1/3rd share in 'Ka' schedule property (hereinafter referred to as the suit property) and their names were duly mutated in R-O-R in 1954-1957 and Raghunath died leaving behind six sons, namely, Nabin, since deceased, who was arrayed as defendant no. 20, Surendra, Prafulla, Bhim, Prasanna and Dhirendra who inherited 1/18th share each.
- ii) On 16.5.1963, one deed of family settlement was executed and by dint of that deed, Nabin got share of Dhirendra. Prafulla and Bhim relinquished their 1-2/18 dec. each in favour of Nabin. So, Bhim and Prafulla became owner of 8 dec. each and Nabin acquired ownership of 20-4/9 dec.
- iii) Prasanna died leaving behind one son, Dulal and one daughter, Janaki. Although Dulal and Janaki sold out more than their share to

Surendra and Nabin but actually, Surendra and Nabin got $9\frac{1}{18}$ share from Dulal and Janaki.

iv) Prafulla died leaving behind one son who sold out his share to Nabin on 29.6.1998 and hence, Nabin and Surendra became owners of $32\frac{17}{18}$ dec. and $13\frac{2}{3}$ dec. respectively. Surendra died leaving behind one son, Amar Patra. Bhim sold out rest of his share being 8 dec. to Amar on 29.6.1998 and hence, Amar got $21\frac{2}{3}$ dec.

v) On 7.3.2013, Nabin sold out $21\frac{1}{4}$ dec. to the plaintiffs and on the same day i.e. on 7.3.2013, Amar sold out his entire share to defendant nos. 1 and 3. Plaintiffs claimed to be the owners of 'Ka-1' schedule properties and it was claimed that the defendant nos. 1, 2 & 3 are the owners of $21\frac{1}{2}$ dec. whereas Nabin, defendant no.20, now deceased, was the owner of rest part of his share lying in 'Ka' schedule property excluding the properties mentioned in schedule 'Kha-1'. The defendant nos. 4 to 12 are in possession of $\frac{1}{3}$ rd share and whereas the defendant no. 13 to 19 are in possession of $\frac{1}{3}$ rd share respectively in 'Ka' schedule property.

vi) It was specifically claimed that the defendant no. 21 was not daughter of Prasanna Patra and she was daughter of Baino and Durgamonee Jana and Prasanna Patra knotted marital tie with Brahma and both of them left behind one son namely, Dulal and one daughter, Janaki who sold out their share to Surendra and Nabin.

3. Records reveal that only the defendant no. 21 namely, Putul Patra (hereinafter referred to as Putul) contested the suit by filing written statement. Specific defence taken by the defendant no. 21 was that she happens to be daughter of Prasanna Patra and Praksha Patra and not of Baino and Durgamonee Jana and she specifically claimed that she did not sell her share which she inherited on demise of her father, Prasanna to anyone and hence, she is entitled to get her share.

4. Records further reveal that Nabin had filed a suit for partition vide T.S.no.147 of 2010 in which Putul was added as defendant no.7 basing upon her application taken out under Order 1 Rule 10 CPC in which it was held that Putul happens to be the daughter of Prasanna Patra. Putul filed written statement along with counter-claim in connection with that suit. Thereafter, Nabin did not proceed with the suit and consequently, the suit was dismissed for non-prosecution and ultimately, counter-claim was also dismissed *ex parte* by an order dated 8.9.2017 on the premise that Putul could not produce document pertaining to the title of Raghunath, Dinanath and Debendra and records of rights were not document of title and Raghunath died leaving behind six sons but only five sons were brought in the array of the defendants and defendant no. 7 could not clarify whether plot nos. 190 and 190/380 were different plots or had arisen out of a single plot.

5. Putul has impugned the order dated 8.9.2017 passed in T.S. no. 147 of 2010, wherein her counter-claim was rejected, in an appeal which has been registered as F.A.T. 18 of 2018. Since the parties are the same and

as the issue is directly and substantially same in both the appeals, the two appeals are taken up for hearing together.

6. However, in T.S. no. 116 of 2014, the learned Court below framed as many as 9 (nine) issues and in corroboration of the fact depicted in the plaint, plaintiffs examined Ajoy Kumar Patra and tendered some documents relating to the suit properties which were marked as Ext. 1 to 9. On the other hand, Putul adduced oral accounts of herself and of two witnesses, namely, Sitaram Maity and Bijoy Maity who were examined as DW-1, 2 & 3 respectively and Putul produced her Aadhaar Card and Ration Card which were admitted in evidence and Putul submitted two certificates issued by the Chairman of the Municipality concerned which were marked as 'X' and 'Y' for identification.

7. Upon contested hearing, the suit was decreed in preliminary form but no share has been declared in favour of Putul holding that she is not daughter of Prasanna. Aggrieved thereby, Putul impugned the judgment and decree passed in preliminary form in the present appeal contending, *inter alia*, that the learned Court committed grave error in holding that Putul is not the daughter of Prasanna and the learned Court below erred in not accepting the evidence tendered by Putul.

8. Mr. Dash, learned advocate for the appellant argues that learned Court below did not consider that the plaintiffs took the plea that Putul is the daughter of Baino Jana and Durgamonee but no evidence could be adduced on their behalf to substantiate such claim. He submits that from the Aadhaar Card and Ration Card, it would be crystal clear that Putul

happens to be the daughter of Prasanna. He further argues that contents of the affidavit-in-chief of PW-1 is beyond pleading and hence, such evidence cannot be accepted. He submits that Putul is not hankering after the share of the suit properties but she is more interested in determination of her paternity which has been disputed in these litigations only to increase a chance of securing more share in the suit property.

9. Mr. Dutta, learned advocate for the respondent riposted to the argument advanced on behalf of the appellant arguing that appellant herself admitted that her Aadhaar Card and Ration Card were issued on the basis of the certificates issued by the Chairman of Egra Municipality and Chairman concerned issued certificates in her favour on the basis of information supplied by her. He strenuously contended that appellant deposed that she got admitted in primary school but she failed to bring school register or any certificate from the school and she could not bring any certificate of birth to prove her paternity and he submits that Dulal and Janaki, children of Prasanna in their deed did not admit of her existence. He asserts that appellant having failed to prove herself to be daughter of Prasanna is not entitled to any share in the suit property.

10. In reply, Mr. Dash, learned advocate for the appellant submits that Birth and Death registration Act was enacted in 1961 and Putul was born in 1955 and at the time of her birth, register of birth and death was not being maintained properly.

11. Core issue required to be decided in both the appeals is as to whether Putul is the daughter of Prasanna and Prakkha.

12. In T.S. no. 147 of 2010, Court of learned Civil Judge, Senior Division, 1st Court, Contai, Purba Medinipore has held that Putul is daughter of Prasanna whereas in another suit being T.S.no. 116 of 2014, Civil Court, Senior Division, 2nd Court has held that Putul is not the daughter of Prasanna. Former suit was instituted in between Nabin and Putul and other co-owners whereas the later suit was instituted by the parties namely, successor-in-interest of Nabin i.e. the parties litigating under the same title and Putul and other co-sharers. So parties in the both the suits are the same. Only difference is that in the former suit, Court held that Putul is the daughter of Prasanna while disposing of an application under Order 1 Rule 10 CPC whereas in later suit, Court took opposite view while passing preliminary decree. It goes without saying that preliminary decree does not dispose of the suit finally and hence, in that sense, such decree is also interlocutory in nature.

13. Indisputably, in civil proceeding, if *factum probandum* is proved on the preponderance of probability, the same will suffice. Civil cases are decided on the basis of preponderance of evidence. Court shall consider the totality of facts and evidence. *Factum probandum* can be said to have been proved in a civil case, if after weighing the various probabilities a preponderance in favour of existence of the fact in issue is found. Court has to consider the evidence as a whole and its finding should depend upon the cumulative effect of the entire evidence. If on consideration of evidence produced by one party, the Court records a definite finding before considering the evidence relied on by the other party, its treatment of the

evidence cannot be appreciated. Court should weigh the oral and documentary evidence adduced by both the parties. Proof means the estimate of a prudent man as to probabilities. If after weighing such evidence, if a prudent man can act on a supposition that 'fact to be proved' exists or considers its existence probable, then it can be stated that fact in issue has been proved.

14. In the given case, Putul adduced his oral testimony and she adduced oral accounts of two witnesses being DW-2 and DW-3, who were aged about 65 and 68 years respectively and the men of the locality where the parties including Putul reside. Both DW-2 and DW-3 consistently voiced that Putul is the daughter of Prasanna. As documentary evidence, Putul produced her Aadhaar Card and Ration Card which had been admitted in evidence and she also produced two certificates issued by the Chairman of Egra Municipality including one legal heirs' certificate which were marked as 'X' and 'Y' respectively for identification since Putul could not bring the Chairman on dock.

15. Admittedly, Unique Identification Authority of India (in short, UIDAI) prepares 'Aadhaar' card. Whole architecture of Aadhaar card is devised to give unique identity to the citizens of the country. It is prepared on the basis of documents e.g. Passport, Ration Card, PAN card etc. supplied by the person during enrolment process. Enrolment for Aadhaar Card also requires giving of demographic information as well as biometric information which is in form of iris and fingerprints. This process eliminates any chance of duplication. UIDAI takes no responsibility with respect to the

correctness of the name, date of birth or address of the person enrolled. Similarly, Ration Card is prepared by the Food & Supply Department of the State which can at best be a proof of address and entitlement to get food grains etc. at subsidized rate.

16. Undoubtedly, school register and/or the certificate by the school authority can be admissible under Section 35 of Indian Evidence Act but its entry also cannot be claimed to be conclusive unless the person who made these entry or the person who supplied the information is/are examined. Now, it also may be argued that certificate of birth can be stated to be a proof of date and time of birth but not a proof of paternity.

17. Now, question is if both the parents passed away and if none of those documents are accepted to be proof of paternity claiming that those were prepared on the basis of information supplied by the person concerned and no authority has any responsibility regarding the correctness of entry made therein, then how, paternity is to be proved.

18. In the case at hand, although plaintiffs claimed that Putul is the daughter of Baino or Bino and Durgamonee Jana but they could not prove the same. One Court has held that Putul is daughter of Prasanna and other Court has held that she is not daughter of Prasanna. Now, question is whether the Court shall simply hold that Putul is neither the daughter of Baino or Bino and Durgamonee nor the daughter of Prasanna and Praksha and the question shall be left unanswered.

19. In like situation, Civil Court shall weigh the effect of evidence brought on record by either of the parties. If evidence of Putul is kept in one compartment, one can find that Putul adduced her oral evidence which has found corroboration from the evidence of two aged persons of the locality and Putul submitted Aadhaar Card and Ration Card. Now, let the Court look into the effect of the order passed by the Court of Civil Judge, Senior Division, 1st Court, Contai on the application under Order Rule 10 CPC. It goes without saying that this order was passed at an interlocutory stage.

20. Order passed on an application under Order 1 Rule 10 CPC in the former suit has not been challenged in any forum rather the plaintiffs in the subsequent suit accepting such order brought Putul in the array of the defendants but agitated the same point in the subsequent suit. The decision taken in T.S. 147 of 2010 in the application under Order 1 Rule 10 CPC shall have a binding effect upon the parties hereto in the subsequent proceeding also, particularly, when the parties have accepted the order passed in former suit.

21. Now, if the effect of oral evidence and documentary evidence adduced by Putul and effect of order passed on application under Order 1 Rule 10 CPC are taken into account keeping in mind the failure of the plaintiffs to prove their assertion that Putul is the daughter of Baino or Bino and Durgamonee, then every civil Court on the basis of preponderance of probability can safely hold that claim of Putul appears to be probable.

22. In view thereof, we are of the opinion that Putul is daughter of Prasanna and Praksha Patra. It is also held that Dulal and Janaki cannot

sell any portion of the suit properties more than their own share and their sale to the limit of their share in the suit property would be valid.

23. In conclusion, both the appeals succeed. Order vide. No. 46 dated 8.9.2017 passed by the Court of Civil Judge, Senior Division, 1st Court, Contai, Purba Medinipore is set aside. Judgment and decree impugned in F.A.no. 121 of 2022 are also set aside. The suit and the counter claim are sent back on remand.

24. The suit and the counter claim shall be readmitted under their original numbers in the register of civil suits in the respective Courts and then, Court of Civil Judge, Senior Division, 1st Court, Contai, Purba Medinipore shall place the record of T.S. no. 147 of 2010 before the Court of Civil Judge, Senior Division, 2nd Court, Contai, Purba Medinipore without any further reference to any other Court and the latter Court shall decide the same in consolidation on the basis of the evidence already on record and shall pass preliminary decree declaring the share of the parties afresh treating that Putul, defendant no. 21 in T.S. no. 116 of 2014 and defendant no. 7 in T.S. no. 147 of 2010 happens to be the daughter of Prasanna Patra and that she is entitled to get 1/3rd share of Prassna Patra.

25. The appeals are thus disposed of, however, without any order as to the costs.

26. Let this judgment along with lower Court records of both the suits sent down to the respective Courts forthwith.

27. Urgent Photostat copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)