

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**BEFORE:
The Hon'ble Justice Soumen Sen
and
The Hon'ble Justice Uday Kumar**

**SAT 91 of 2015
With
I.A. CAN 1 of 2019 (Old CAN No. 11474 of 2019)**

**Sri Nikhil Bhattacharya & Anr.
Vs.
Sri Sasthi Bhandari & Ors.**

For the Appellants	: Mr. Tanmoy Mukherjee, Adv. Mr. Kajal Roy, Adv. Mr. K.R. Ahmed, Adv. Mr. Rudranil Das, Adv. Mr. Suman Nandi, Adv.
For the Respondent No.1	: Mr. Kartick Kumar Bhattacharya, Adv. Mr. Tirtha Pati Acharya, Adv. Ms. Soumashree Dutta, Adv.
Order Dated	: 19 th April, 2023

Soumen Sen, J: By consent of the parties the appeal and the applications are taken up together and disposed of by this common order.

The appeal involves a short question of law.

The question is whether the purchaser of a subsequent transferee in respect of undemarcated suit plot can maintain a suit for partition.

The trial Court decreed the suit on contest. The appellate court reversed the said findings.

Originally Surendra Bagdi and Kalipada Bagdi are the owners of the suit property. They sold 18 decimals of land in the northern side of the

suit property out of their 33 decimals of land to Pravarani Das by a registered deed dated 1st April, 1974. Pravarani Das subsequently sold the said property to the extent of 18 decimals to the plaintiffs by a registered deed dated 30th August, 1995. The plaintiffs claimed to be in possession of the said land since purchase by constructing a dwelling house in a portion of the said land. The land purchased by the plaintiffs is situated adjacent to the East side of the village panchayat road which the plaintiffs claimed they are using for ingress and egress. A portion of the said land is laying vacant leading to their residential home and there is no other way or passage to go to their residential home. Defendant nos. 2 to 5 are the legal heirs of Surendra and Kalipada. The remaining portions of 15 decimals of land have devolved upon them consequent upon the death of Surendra and Kalipada. The defendant no.1 purchased 14 decimals of land in the remaining area of the suit plot out of 15 decimals of land to the south of plaintiffs' land from two sons of late Kalipada being defendant nos. 3 and 4 by a registered deed. They were, however, not the owner of the entirety of the suit property left by Kalipada and the said deed does not mention any boundary. Subsequently in order to perfect his title the defendant no. 1 purchased 7 decimals of land out of that 14 decimals by a registered Kobala dated 11th September, 1996 executed by two other legal heirs of Kalipada i.e. defendant no.s 2 and 5. It was alleged that in the said deed the description of the alleged purchased land was manipulated by drawing false and imaginary boundary alleging existence of village road both on the western and southern side of the land and in the same way description of northern and

eastern boundary of the said land were drawn which is contrary to the real state of things. The plaintiffs alleged that the defendant no.1 could not claim such land in the said plot within such alleged boundaries which evidently overlapped the land of the plaintiffs in the said plot which they claimed to have purchased prior to the purchase of defendant no.1. The plaintiffs are possessing the same till today. It was alleged that the defendant no.1 with ulterior motive made claim over the entire road side land which is more valuable portion of the land in the suit plot. In order to avoid litigation the plaintiffs requested the defendants for amicable partition of land.

The defendants however, denied the right of the plaintiffs. The defendants in their written statement has clearly stated that Pravarani Das purchased well defined area of the south plot from the original owners Surendra and Kalipada and when the plaintiffs purchased the said portion of the said land from Pravarani Das then question of partition of the said plot does not arise at all. It was the definite case of the defendant that they purchased 14 decimals of land in the suit plot from the legal heirs of Kalipada and as such he has right to make construction upon his own land. The plaintiffs have purchased eastern portion of the suit plot and constructed a hut thereon and the front door and courtyard of the said house are situated to the eastern portion of the suit plot. The Panchayat road is situated to the east of the plaintiffs' portion of the suit plot. They used the said road for ingress and egress from their said mud hut. The plaintiffs have no land to the west of the said plot. There is no

door or any boundary wall to the west of the plaintiff's mud hut. The defendants also denied that the plaintiffs' mud hut and as such the question of using the panchayat road situated to the West of the suit plot by the plaintiffs for ingress and egress to their mud hut is false. They denied that plaintiffs' vendor Pravarani Das purchased 18 decimals of land in the northern side of the suit plot as defined are of the suit plot.

During the pendency of the appeal an application was filed by the plaintiffs from amendment which, inter alia, include a prayer in the alternative for declaration of right, title and interest in the land mentioned in the B schedule of the plaint.

In the event the partition failed.

The defendant filed the additional written statement claiming that the plaintiffs were not in possession of the B schedule property.

During trial the plaintiffs relied upon the following exhibits:

- a) Exhibit 1- Original sale deed being no.4293/95
- b) Exhibit 2- Original sale deed being no.1940/74.
- c) Exhibit 3- Certified copy of the sale deed being no.6527/95.
- d) Exhibit 4- Certified copy of the sale deed being no.6979/96.

On behalf of the defendants the following documents were filed and marked exhibits A- Original deed being no.6979/96 and Exhibit A1- Original deed being no. 6527/95.

The learned trial judge held that the plaintiffs are the co-sharers in respect of A schedule suit property to the extent of 18 decimals of land jointly and the suit property is liable to be partitioned. The suit was decreed on contest against defendant no.1 and ex parte against other defendants in preliminary form.

The right to the property or share in the property by the plaintiffs is based on the registered deed of conveyance dated 30th August, 1995.

It appears from the schedule of boundaries mentioned in the said deed that the vendor of plaintiffs/respondents being Smt. Provarani Das sold out a well demarcated land. The said land is demarcated in the following manner.

On the northern side: Tarapada Saha and Sibapada Saha

On the Southern side: Milan Sen

On the eastern side: Surendra Bagdi

On the western side : Road

The sold out land is situated within the aforesaid boundaries and extended from east to west.

Defendant no. 1 however, claimed that he has acquired his right, title and interest by virtue of two registered deed of conveyance dated 8th December, 1995 and 11th September, 1996 which have been marked as Exbt. A1 and A. Exbt. A1 would show that the defendant no.1 purchased the share of the defendant nos. 3 and 4 to the extent of 07 decimal out of 14 decimals and by virtue of Exbt. A the defendant no. 1 purchased the

share of the respondent no.5 and the share of the mother (defendant no.2 since deceased) of the defendant /respondent nos. 3, 4 and 5 i.e. the remaining 07 decimals out of 14 decimals. The appellate court had noted that in Exbt.A1 in the schedule of boundary is not mentioned but there is a schedule of boundary in Exbt.A.

We have examined the said exhibits and it appears that the fact in this regard has been correctly stated by the first appellate court.

The schedule of boundary of Exbt.A is:

“on the northern side: Santiram Saha

On the southern and western side: Road

On the eastern side: Nikhil Bhattacharya”

On the basis of the aforesaid the first appellate court has come to a finding that non mentioning of boundary of Exbt.A1 is the real dispute between the defendants but the land purchased by the plaintiffs cannot be affected in any way since the same had been purchased by Provarani Das on 1st April, 1974 from the predecessor of the defendants/respondent nos.3, 4 and 5 and plaintiffs purchased the same from Pravarani Das on 30th August, 1995. It is clear from Exbt.1 that Pravarani Das has sold out land to the plaintiffs having specific boundaries. Moreover the plaintiffs have pleaded that they are possessing their land being well demarcated since the time of their vendor. They also have construction a house.

In the background of the aforesaid evidence the learned first appellate court relied upon the decision in **Sm. Labanya Bala Debi vs**

Sm. Parul Bala Debi And Ors. reported in (1972-73) 77 CWN 272 in allowing the appeal by reversing the judgment passed by the learned trial court. **Labanya** (supra) was a case where a common owner had transferred specific portions out of the entire plot with defined areas and boundaries to different purchaser on different deeds, although mentioning his proportionate share with reference to the entire Jama (property). Justice Anil Kumar Sinha as His Lordship then was in paragraph 5 has laid down the law in the following words:

"5.....This is a case where a common owner has transferred specific portions out of the entire plot with defined areas and boundaries to different purchasers on different dates although mentioning his proportionate share with reference to the entire jama. It is well settled that to establish jointness, that is, in such cases a tenancy in common, all co-owners must have equal rights of possession co-extensive with the entire property although their shares may be either defined or undefined. "To constitute a tenancy in common", as stated by Freeman in his "Co-tenancy and Partition" 2nd Edition at page 150 "there must be an equal right to the possession of every part and parcel of the subject-matter of the tenancy. Several persons may together own an entire thing without being co-tenants. This is always the case where one of them has the exclusive right of possession in one part of the thing, and the others have such exclusive right in the other parts." In the facts of the present case, it appears that although the property belonged to a common owner he sold this property in divided small plots, so to say to different persons separately and exclusively mentioning the area as also defining the boundaries to each of the purchasers. It, therefore, seems clear that by such transfer each of the purchasers had no right to possess those specific plots sold to others jointly with them. The mere fact that proportionate share of the common owner in respect of these specific portions sold to each of the co-sharers in the document was mentioned could not by itself create rights or interest of co-ownership in respect of the entire property. The share of the common owner representing the specific portions sold to each of the purchasers on the facts

of this case must be deemed to have been mentioned for the purpose of payment of the proportionate rent of the entire jama to the landlord. There is nothing in any of the impugned documents of sale to show that the sale of specific portions with defined boundaries to each of the co-sharers was made by way of amicable arrangement for convenience of possession of different purchasers. In fact no such case has been made out by the plaintiffs at any point of time. Therefore, applying the test of equal rights of enjoyment and possession of the entire property essential in the case of co-ownership, clearly, plaintiffs' suit for partition as co-owner fails.” (emphasis supplied)

Mr. Tanmay Mukherjee learned Counsel appearing for the appellants has submitted that an un-demarcated portion of land was sold in favour of the appellants. It is submitted that the deed, by which Pravarani acquired title in respect of 18 decimals of land, in fact, represents undivided share of Bagdis and there is no evidence on record suggesting that a partition had taken place in between Badgis or Bagdis' and Pravarani. It is submitted that by reason of purchase by Pravarani, she became a joint owner and co-sharer with the Bagdis and shall continue to hold un-demarcated and un-partitioned land with the Bagdis after the property was sold in her father to the extent of 18 decimals. Mr. Mukherjee has referred to a decision of the learned Single Judge in ***Biswanath Sarkar & Anr. vs. Sunit Kumar Saha*** reported in (2013) 3 ***WBLR (Cal)*** 271 and submitted that unless there is a partition in accordance with Section 14 of the West Bengal Land Reforms Act, 1955, mere possession of a part of the property would be lead to a presumption that the parties have amicably partitioned the property and hence, the

finding of the learned First Appellate Court relying on Sm. **Labanya Bala Debi** (supra) is erroneous.

Mr. Kartick Kumar Bhattacharya, learned Counsel for the respondent no.1 has submitted that the plaintiffs in the plaint accepted that Pravarani purchased 33 decimals of land at a valuable consideration having a defined area and in fact in the plaint, the plaintiffs have indicated the area presently under their occupation in the schedule to the plaint with clear description of the property with boundary details. Mr. Bhattacharya has referred to paragraphs 2 and 3 of the plaint and the schedule of the plaint to show that it was a well-demarcated and defined area that was sold by Pravarani in favour of the present appellants.

We have already indicated that the properties are well-demarcated and well-defined. We have also referred to the exhibits to show that the land sold was a demarcated land which is also evident from the schedule to the plaint. The property in the schedule is a well demarcated land. In fact, as rightly pointed out by Mr. Bhattacharya that in the plaint the plaintiff in paragraph 3 has clearly stated that “during their life time said Surendra Bagdi and Kalipada bagdi jointly sold 18 decimals of land in the suit property out of its total area of 33 decimals to Sm. Prova Rani Das w/o. Sri Bidyut Das then residing at Kuchuighaata by a registered kobala dated 1.4.1974 and registered on 1.4.1974 in the Sadar Joint Sub-Registrar’s office at Suri at a valuable consideration describing and defining the area therein so sold by them and put Sm. Prova Rani Das to

possession thereof and since purchase said Sm. Provarani Das began to possess that defined area of land of the suit plot.....”

The appellants are the purchases from Provarani. In the instant case, specific portions of the land were sold to plaintiffs/appellants and defendant no.1 by virtue of different deeds. The plaintiffs are the second transferees as Pravarani Das was the original transferee from Surendra and Kalipada who are the purchaser of the defendant / respondent nos.3, 4 and 5 in the year 1974.

The learned Single Judge noticed the decision in ***Ratipati Bandopadhyay & Anr. vs. Mrinalini Deby & Ors.*** reported in (2006) 4 **CAN HN 440** and distinguished it on the ground that the opposite party during cross-examination had admitted that the property purchased by him was not partitioned amongst the co-sharer. In the instant case, the original owners sold the well-demarcated property to Provarani the vendor of the appellants and Provarani, in turn, sold the demarcated portion to the appellants.

On such circumstances we do not find any reason to interfere with the judgement passed by the first appellate court. The second appeal fails.

SAT 91 of 2015 and I.A. CAN 1 of 2019 stand dismissed.

However, there shall be no order as to costs.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)