

Date 14.12.2023
Court No.13
Item No.2
PA

**FA 373 of 2013
With**

**CAN 6 of 2023
With
CAN 7 of 2023**

**Smt. Karunamoyee Barman & Ors.
Vs.**

**Sree Sree Iswar Tarakali Mata Thakurani,
Represented by Sri Deba Prasad Dey & Ors.**

**Mr. Sourav Sen
Ms. Shila Sarkar
Ms. A. Chakraborty
...For the Appellants.**

**Mr. Uttiya Ray
Mr. Arnab Mandal
...For the Respondents..**

1. The parties had been heard at length. The appeal is directed against the judgment and order dated 23.08.2013 passed by the Civil Judge (Sr. Div.), 1st Additional Court, Burdwan in T.S. No. 28 of 2010. The suit was dismissed on contest with costs.
2. In course of the hearing of this appeal, this Court found that the documents exhibited in the Trial Court by the defendants/respondents are not available. The parties have proceeded with the hearing notwithstanding the above.
3. The facts of the case in the suit are that the appellant/plaintiffs sought a declaration that 50 per cent of the suit property belonged to them. A further declaration has been sought that the earlier decrees passed in the Civil Suits between the parties are null and void. The sum and substance

of the arguments advanced by the appellants are that with the expiry of one Gatilal Barman admittedly a bachelor, the predecessor, one Anil Kumar Barman his nephew inherited the suit properties.

4. Before going into the rival contentions and the evidence laid by the parties in the court below as available before this Court, this Court finds that the Trial Judge committed error both in fact and law.
5. As many as 10 issues were framed to decide the lis between the parties. The issues are as follows:
 - 1) Is the suit maintainable in its present form?
 - 2) Whether the plaintiffs have any cause of action to file this suit?
 - 3) Is the suit bad for defect of parties?
 - 4) Is the suit barred by limitation?
 - 5) Whether the suit is properly valued and stamped?
 - 6) Whether the 'Ka' schedule property is the joint property of the parties?
 - 7) Whether the plaintiffs have any share in the suit property?
 - 8) Whether the judgement and decree described in schedule 'Kha' of the plaint are all fraudulent, collusive, inoperative

and not binding upon the plaintiffs and
'Ka' schedule property?

9) Whether the plaintiffs are entitled to get
the decree as prayed for?

10) To what other relief, if any, are the
plaintiffs entitled?

6. The Learned Judge has taken up issues No. 1 to 8 together and has dismissed the claim of the appellants/plaintiff in a hurry. The procedure adopted by the court below is far from satisfactory. This Court is of the clear view that issue Nos. 6 and 7 and 8 were required to be dealt with independently and separately.
7. As a consequence of the aforesaid the learned court below has completely misdirected itself in assessing and appreciating the facts of the case and the evidence that has come on record.
8. In the above circumstances, this Court is of the view that the impugned judgment and decree is not sustainable in law and is therefore set aside. The suit is remanded back for consideration afresh by the court below. The court in its discretion may permit the parties to lead further evidence.
9. Hence it is order that the judgment and decree dated 23.08.2013 passed by the Civil Judge (Sr. Div.), 1st Additional Court, Burdwan in T.S. No. 28 of 2010 shall stand set aside and the suit shall

stand restored to its file and number in the court below for consideration afresh as directed above.

10. The appeal is thus, allowed.

11. There shall be no order as to costs.

12. Let the LCR be returned to the court below with urgency and expeditiously.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)