

09.09.2024.  
Court No.13  
Item No. 23  
pk

**F.A. No. 30 of 2014**  
**With**  
**I.A. No. CAN 1 of 2013 (Old CAN 9693 of 2013)**  
**And**  
**I.A. No. CAN 3 of 2014 (Old CAN 3445 of 2014)**

**Smt. Sujata Maji & Anr.**  
**Versus**  
**Gopal Dutta & Ors.**

Mr. Rahul Karmakar,  
Mr. Ram Chandra Guchhait,  
Mr. Sourav Guchhait

...For the appellants.

Mr. Rabindra Nath Mahato,  
Mr. Animesh Das

... For the respondent nos. 2 to 6.

1. The instant appeal is directed against the judgment and decree dated 18<sup>th</sup> June, 2013 passed by the learned Civil Judge (Senior Division). 3<sup>rd</sup> Court at Howrah in Title Suit No. 129 of 2011. The suit was filed by the appellants/plaintiffs against the respondents/defendants in respect of Schedule A and Schedule B of the property.

2. There were four several suits being T. S. No. 141 of 1988, T. S. No. 199 of 1993, T. S. No. 133 of 1997 and T. S. No. 108 of 2008 (that was renumbered as T.S. No. 2204 of 2012) that are also relevant in the instant case. Each of them have been filed prior to T. S. No. 129 of 2011.

3. T. S. No. 141 of 1988 and T. S. No. 199 of 1993 were in respect of Schedule A to the property. In both the suits filed by the defendants and/or their

predecessor or successors-in-interest, declaration of title and injunction was sought.

4. T. S. No. 133 of 1997 was in respect of Schedule B to the property as was T. S. No. 108 of 2008.

5. T. S. No. 141 of 1988 and T. S. No. 133 of 1997 were decreed ex parte. T. S. No. 199 of 1993 was decreed on contest. T. S. No. 199 of 1993 was a suit for eviction of the appellant no. 1 in respect of Schedule A to the property that was decreed on contest.

6. T. S. No. 108 of 2008 was also in respect of Schedule B property. The said suit was decreed ex parte directing eviction of the defendants/appellants from Schedule B property.

7. The pendency and decree in T. S. No. 108 of 2008 has been brought to the notice of this court and the appellant for the first time today by the learned counsel for the respondents, defendants in the suit in the trial court.

8. In the impugned judgement dated 18<sup>th</sup> June, 2013 the Court below was considering two issues. The first one was an application under Order VI Rule 17 where the plaintiffs/appellants sought amendment of the plaint to add a declaration in respect of the decree passed in T. S. No. 141 of 1988 and T. S. No. 133 of 1997. Rejecting the said application, the Court held that the amendment would have changed the nature and character of the suit.

9. This Court is of the view that in addition to the same an independent suit cannot be maintained seeking declaration against a decree already passed in another suit. Since two decrees were ex parte, the remedy of the appellants/plaintiffs lay either under Order IX Rule 13 or resistance of the decree in execution, if any, inter alia, under Section 47 or under order 21 Rule 97 to 103 of the Code of Civil Procedure. The impugned judgement to the aforesaid extent cannot be faulted on the aforesaid grounds.

10. In the second part of the impugned judgement, the Court below at the stage of order 14 Rule 2 i.e. framing of issues simpliciter held that the suit was barred by principles of res judicata.

11. The learned counsel for the appellants would argue that the impugned judgement to that extent is contrary to law since his clients have been admitted as co-sharers in Schedule B to the plaint in T. S. No. 133 of 1997, by the plaintiffs themselves.

12. The decree in T.S. 133 of 1997, however, appears to be rather vague. The plaintiffs therein i.e. the respondent defendants herein, have been held as co-sharers in the suit property. There is no however finding as regards the shares of the appellants. The thin line to which the appellants seek benefit from is an admission in the plaint in T.S. 133 of 1997 and its schedule that the appellants herein and the defendants therein are co-sharers in the suit property

i.e. Schedule B of the suit property. The same has not resulted in any decree.

13. It appears from the records that the plaintiffs were always aware of the proceedings in the three suits except T. S. No. 108 of 2008. The Court below took notice of the same.

14. This Court is of the view that the remedy of the appellants lies in taking out appropriate proceedings in each of the aforesaid suits. It is only upon an appropriate declaration, recall, modification or other interference with the said decrees that the cloud of the plaintiffs' title in respect of the suit property i.e. schedule B can be removed.

15. Once the issue as regards the assertion of the plaintiffs in the aforesaid four suits and their rights and extent thereof have appropriately clarified, the plaintiffs can then take out appropriate proceedings to seek remedies in respect of the suit properties.

16. With the observations made herein above, the instant appeal and the connected applications, if any, are disposed of without any other order.

17. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

***(Rajasekhar Mantha, J.)***

***(Ajay Kumar Gupta, J.)***

