

**In the High Court at Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya  
And  
The Hon'ble Justice Uday Kumar**

**F.A.T. No. 48 of 2020**

**Smt. Shrabani Chatterjee and another  
Vs.  
Smt. Krishna Majumdar and another**

|                                |   |                                                                  |
|--------------------------------|---|------------------------------------------------------------------|
| For the appellants/petitioners | : | Mr. Anujit Mookherji,<br>Mr. Prithish Chandra                    |
| For the respondent             | : | Mr. Arup Krishna Das,<br>Mr. Sanjoy Ghosh,<br>Mr. Durba Banerjee |
| Hearing concluded on           | : | 07.11.2024                                                       |
| Judgment on                    | : | 13.11.2024                                                       |

**Sabyasachi Bhattacharyya, J.:-**

1. The plaintiffs in a partition suit have preferred the instant appeal against the judgment and decree dismissing such suit. The plaintiffs/appellants claim that one Keshablal Majumdar was the owner of a property. He died, leaving behind his five sons, namely Srijib Majumdar, Sridhar Majumdar, Srish Majumdar alias Srish Chandra Majumdar, Srikar Majumdar and Srikanta Majumdar as his only heirs and legal representatives. It is argued that the said five sons amicably partitioned the properties between themselves and their names were recorded in the finally published L.R. Records in separate Khatians as

Raiyats and also duly recorded in the Assessment Register of Borough Committee-II under the Asansol Municipal Corporation.

- 2.** The present partition suit was instituted between the heirs of Sridhar (since deceased), one of the sons of late Keshablal, in respect of the holding recorded in the name of late Sridhar, on the premise that there was amicable partition between the heirs of late Keshablal whereby late Sridhar came to be the exclusive owner of the said holding, which is the subject property in the suit. As such, the other heirs of late Keshablal were not impleaded as parties.
- 3.** Learned counsel for the appellants places reliance on the documents adduced as evidence by the plaintiffs/appellants and were marked as Exhibit and argues that those were sufficient to show that the original property of Late Keshablal was demarcated into separate holdings which were recorded separately in the names of his five sons, one of whom was Sridhar, the predecessor-in-interest of the parties.
- 4.** In certain saledeeds, the defendants signed as witnesses. In the said saledeeds, the amicable partition between the sons of late Keshablal was mentioned. Hence, it is argued that the defendants/respondents are estopped from denying such oral partition.
- 5.** It is argued that the learned Trial Judge proceeded on an erroneous premise that a notarized family arrangement between the parties dated September 3, 2016, which was produced on behalf of the plaintiffs but not exhibited, was required to be compulsorily registered. Although the said document was not marked as an exhibit, the learned Trial Judge looked into it and came to such conclusion. It is argued that since the

document merely recorded the previous factum of family arrangement and did not, by itself, effect the partition or create any title, it was not required to be compulsorily registered and ought to have been taken note of.

6. It is next argued that the learned Trial Judge erred in law in holding that Section 14 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as “the WBLR Act”) creates a bar in co-sharers entering into a mutual family arrangement partitioning their joint property.
7. In support of such contention, learned counsel for the appellants cites *Ravinder Kaur Grewal and others v. Manjit Kaur and others*, reported at (2020) 9 SCC 706, where the Supreme Court held that the courts have leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect, the rule of estoppel is pressed into service and is applied to shut out the plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits.
8. In the said judgment, it was *inter alia* reiterated that the family arrangement may be even oral in which case no registration is necessary. A distinction was made by the Supreme Court between a document containing the terms and recitals of a family arrangement made “under the document” and a mere memorandum prepared after the family arrangement had already been made either for the purpose

of the record or for information of the court for making necessary mutation.

9. Learned counsel next cites *Korukonda Chalapathi Rao and another v. Korukonda Annapurna Sampath Kumar*, reported at (2021) SCC OnLine SC 847, where the Supreme Court observed that if the family arrangement does not purport to, by itself, create, declare, assign, extinguish or limit right in properties, it may not attract Section 49(1)(a) of the Registration Act.
10. Learned counsel appearing for the appellants also relies on a Division Bench judgment of this Court in the matter of *Sk. Saifuddin and another v. Sk. Nurul Huda*, reported at (2023) SCC OnLine Cal 3870, where it was held that an individual can certainly acquire title to an item of property if it has fallen to his share in a partition. If a partition is through a decree of a court or a written document, filing of the decree or the document would go a very long way in establishing the title. If on the other hand, the partition is oral, the evidence to prove it can be adduced, which may comprise of the deposition of the persons who were allotted shares or those acquainted with the partition or the revenue records that reflect the partition.
11. Accordingly, it is argued that the learned Trial Judge ought to have relied on the documents placed before the court and exhibited by the plaintiffs/appellants, which go on to show that the heirs of Late Keshablal, the original owner, had mutually partitioned the property between themselves. Hence, the finding of the learned Trial Judge that

the suit was bad for non-joinder of the other heirs of Keshablal is erroneous in law.

- 12.** Learned counsel appearing for the defendants/respondents contends that the plaint does not contain any specific averment of oral partition and thus, the Trial Court would have been justified in not considering the evidence on such issue.
- 13.** It is next argued that the saledeeds exhibited by the plaintiffs do not, in any manner, indicate any admission of the defendants/respondents regarding oral partition. The defendants were merely witnesses to the document who, in law, are not even required to know the contents of the same. The role of witnesses is merely to attest that the document was signed by the signatories and no further.
- 14.** It is next contended that the burden was on the plaintiffs to prove whether the alleged oral partition took place before 1969, when Section 14 of the WBLR Act came into force. Having not done so, the Trial Court was justified in refusing to believe the case of amicable partition. As per Section 14(6) of the WBLR Act, it is argued, notwithstanding anything contained in any other law for the time being in force or in any agreement or any custom or usage or any decree, judgment or award of any court, no partition among co-sharers of a raiyat in a plot of land shall have any force unless such partition is made by registered instrument or by a decree or order of a court and is effected by metes and bounds. On both the conditions having been fulfilled, such partition shall be deemed to have come into force from the date of registration of the deed of partition or the date of final decree

or order of a court, as the case may, be or from the date of effecting partition by metes and bounds, whichever is later.

15. Learned counsel for the respondent cites *Md. Nazrul Islam and another v. Sri Uday Chakraborty and others*, reported at (2017) 2 CHN 167 (DB), where a Division Bench of this Court held that by virtue of Section 14 of the WBLR Act, partition can only be effected either by a registered deed of partition or by a decree of acivil court. No other mechanism for partition is recognized under the said Section, which was amended in the year 2002 giving retrospective effect from August 7, 1969. The only exception made was that Section 14 cannot nullify the effect of oral partition if it is found that joint property belonging to the co-sharers were, in fact, partitioned amicably prior to August 7, 1969.
16. Upon hearing learned counsel for the parties, we arrive at the following conclusions:
17. The first issue which crops up is whether the Trial Court was justified in holding that the notarized family arrangement dated September 3, 2016 was compulsorily registrable.
18. Although the said document was not exhibited and hence cannot be looked into by this Court, nor would it have been relied on by the learned Trial Judge, for the sake of doing complete justice, as the Trial Court took note of the document and the plaintiffs rely on the same, we have looked into the document, a copy of which was handed over by learned counsel for the appellants. However, it is evident from the said document that the same does not merely recognize or record a prior family arrangement or mutual partition arrived at by the co-sharers but

itself purports to effect such partition. In several places of the said document, the parties clearly mentioned that partition was being effected by virtue of the said document. Hence, the said document was compulsorily registrable and was rightly not marked as an exhibit in the court below.

- 19.** Another important aspect is elicited from the said document, being that at least before September 3, 2016, there was no partition between the heirs of Sridhar, the predecessor-in-interest of the parties and one of the sons of Late Keshablal, since otherwise, there would be no occasion to enter into such purported partition deed unless the property was joint till then.
- 20.** From the evidence adduced by the plaintiffs, including the L.R. Records and other documents which show that different holding numbers were recorded in the name of different heirs of Late Keshablal, there is nothing to indicate that those were based on any lawful partition having been effected between the heirs of Late Keshablal by metes and bounds. There is nothing on record to show the date on which any oral partition was effected between the said heirs, if at all.
- 21.** Learned counsel for the respondents is justified in arguing that the saledeeds exhibited by the appellants, although recording amicable partition in writing between the legal heirs of Sridhar and the vendors, the respondents were merely attesting witnesses to the same. The law is very clear on the subject as to attesting witnesses being merely witnesses to the act of the document being signed by its signatories. A

person signing as an attesting witness is not supposed to know or bear out the contents of the document.

- 22.** Another aspect which is to be considered is that the only “amicable partition in writing” sought to be brought on record is the document dated September 3, 2016 which at best evidenced that an effort was made in that regard on the said date that is on September 3, 2016 and not before.
- 23.** In any event, there is precious nothing on record to show that any oral partition or mutual arrangement was arrived at between the heirs of Late Keshablal before August 7, 1969, when Section 14 of the WBLR Act was retrospectively given effect to by the amendment of the year 2002 to the WBLR Act.
- 24.** Hence, the learned Trial Judge was justified in observing that no lawful partition was effected between the heirs of Late Keshablal and hence, all the heirs of Late Keshablal Majumdar were necessary parties to the partition suit.
- 25.** Another aspect cannot be overlooked altogether. P.W.1, who is also the plaintiff/appellant no.1, in her cross-examination dated November 2, 2017, admitted that her father had acquired undivided one-fifth share in the property left by Late Keshablal Majumdar and no lawful partition took place between her father and her uncles regarding the properties left by Late Keshablal Majumdar. Although in the very next sentence the witness denied that the properties left by Late Keshablal Majumdar are joint and further stated later that she had documents to show amicable partition, which are *parchas* standing in the name of several

co-sharers showing their shares separately, such evidence is contradictory, to say the least. Even if benefit of doubt is given to the said witness, who is a lay person who might not have properly appreciated the connotation of the expression “lawful partition”, the documents relied on by her and the other witnesses of the plaintiff are all of a period much later than August 7, 1969.

- 26.** Coming to the judgments cited by the appellants, in *Ravinder Kaur Grewal (supra)*, a general proposition was laid down by the Supreme Court that a family arrangement distributing joint property between family members may even be oral, in which case no registration is necessary. Again, in *Korukonda Chalapathi Rao (supra)*, the Supreme Court observed that a document which does not purport by itself to create, declare or assign and/or extinguish or limit a right in property may not be compulsorily registrable.
- 27.** However, as discussed earlier, the document dated September 3, 2016, itself purported to create such right and thus did not fall within the exception as laid down in *Korukonda Chalapathi Rao (supra)*.
- 28.** As to *Ravinder Kaur Grewal (supra)*, the question did not fall for consideration before the Supreme Court as to the interplay between Section 14 of the WBLR Act and the general proposition that there can be partition by oral family arrangement.
- 29.** It is well-settled by a long line of judgments that there can be, otherwise, mutual partition by oral agreement between the members of a family by way of a family arrangement. However, the position of law is quite different in the State of West Bengal in view of Section 14 of the

WBLR Act. The said Section, which came into effect by virtue of the 2002 Amendment to the WBLR Act, was given retrospective effect from August 7, 1969. Sub-section (6) of Section 14 contains a *non obstante* clause, signifying that the said provision overrides not only any other law for the time being in force or any agreement but also any custom or usage or any degree, judgment or award of any court whatsoever, thus overriding the general proposition as laid down by the Supreme Court in *Ravinder Kaur Grewal (supra)* in so far as the State of West Bengal is concerned.

- 30.** Section 14(6), in no uncertain terms, provides that no partition amongst co-sharers of a raiyat in a plot of land shall have any force unless such partition is made by a registered instrument or by a decree or order of a court and is effected by metes and bounds and only if both the conditions are fulfilled, the partition takes effect on the date of registration of the deed or the final decree and/or from the date of effecting partition by metes and bounds, whichever is later.
- 31.** Thus, *Ravinder Kaur Grewal (supra)* and/or *Korukonda Chalapathi Rao (supra)* are not binding propositions on the interplay between Section 14 of the WBLR Act and the generally established legal proposition regarding oral partitions being valid in terms of the family arrangements.
- 32.** The Division Bench of this Court, in *Md. Nazrul Islam (supra)*, rightly observed that Section 14 cannot nullify the effect of oral partition if it is found that joint properties belonging to the co-sharers were partitioned amicably prior to August 7, 1969.

- 33.** In the present case, however, there being no pleading or proof to that effect, it cannot be said that there was ever any lawful partition between the sons of Late Keshablal.
- 34.** Before parting with the matter, the definition of “raiyat” in Section 2(10) of the WBLR Act is required to be looked into. It defines “raiyat” as a person or an institution holding land for any purpose whatsoever. “Land”, on the other hand, has been defined in Section 2(7) of the said Act to include land of every description as mentioned therein together with all interests and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to earth. Notably, homesteads have also been included in the said definition. Thus, the provisions of Section 14 are squarely applicable in the present case, more so, since in the very first paragraph of the plaint, it has been asserted by the plaintiffs that Late Keshablal Majumdar and his five sons were ‘raiyaats’ in respect of the property.
- 35.** Thus, in view of the above discussions, we are of the opinion that the learned Trial Judge was perfectly justified in dismissing the partition suit for non-joinder of all the heirs of Late Keshablal Majumdar, since the plaintiffs/appellants failed to prove any lawful partition having been effected between the sons of Late Keshablal at any point of time.
- 36.** Accordingly, no interference is called for with the impugned judgment and decree and consequently, the appeal fails.
- 37.** Hence, F.A.T. No.48 of 2020 is dismissed on contest without, however, any order as to costs.

- 38.** The impugned judgment and decree dated December 17, 2018 passed by the learned Civil Judge (Senior Division), Second Court at Asansol, District Paschim Bardhaman in Title Suit No. 73 of 2016 is accordingly affirmed.
- 39.** Pending interlocutory applications stand thus disposed of.
- 40.** Interim orders, if any stand vacated.
- 41.** A formal decree be drawn up accordingly.

**(Sabyasachi Bhattacharyya, J.)**

I agree.

**(Uday Kumar, J.)**