

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)

Present:

The Hon'ble Justice Biswajit Basu.

S.A. No. 110 of 2013

CAN 08 of 2022

SMT. KARABI CHOWDHURY (SINCE DECEASED)
RAJAT CHOWDHURY & ANR.

vs.

DHANANJAY CHOWDHURY

For the appellants: Mr. Haradhan Banerjee, Sr. Adv.,
Mr. Sumit Ray.

For the respondent: Mr. Surajit Nath Mitra, Sr. Adv.,
Mr. Partha Pratim Roy,
Mr. Avra Mazumder,
Mrs. Pramiti Bandopadhyay.

Heard on : 03.01.2024

Judgment on : 22.03.2024

Biswajit Basu, J.

1. The instant second appeal is at the instance of the defendants in a suit for eviction of licensees and other consequential reliefs being Title Suit No. 50

of 2010 and is directed against the appellate decree dated November 30, 2012 passed by learned Additional District Judge, Fast Track(I) Islampur, District-Uttar Dinajpur in Title Appeal No. 12 of 2012 thereby reversing the decree dated April 30, 2012 passed by the learned Civil Judge (Senior Division) Islampur in the aforementioned suit.

2. The second appeal was admitted under Order XLI Rule 11 of the Code of Civil Procedure to answer the following two substantial questions of law:-

1) Whether the learned judge in the lower appellate court, substantially, erred in law in reversing the decree of dismissal passed by the learned judge in the trial court rejecting the defence case of jointness without considering the voluminous documents produced by the defendant during trial, that is, revenue records of right, municipal record with sanctioned building plan and income tax return?

2) Whether the impugned judgment passed by the lower appellate court is a proper judgment of reversal?

3. The facts relevant to answer the aforesaid substantial questions of law are thus, the plaintiff (since deceased) was the elder brother of the defendant (since deceased). The plaintiff alleged that he, out of his own funds, by a registered deed of conveyance dated March 09, 1960 had purchased a piece of land at Islampur, District-Uttar Dinajpur (hereinafter referred to as the 'suit land' in short) and had constructed a two storied pucca building thereon described in the schedule 'A' appended to the plaint of the suit. The plaintiff has further alleged that he had allowed his younger brother and his family members to occupy the first floor of the said two storied building described in the schedule 'B' appended to the plaint of the suit as licensees under him. The

said license though was revoked by a notice dated March 24, 2010, but the licensees refused to quit and vacate the Schedule B property, hence the suit.

4. The defendant contested the said suit with a defence that he is not a licensee under the plaintiff but a co-owner of the suit land and the structure thereon. The suit land though was purchased in the name of the plaintiff but for the benefit of all the family members and the consideration price was paid by Sarat Chandra Chowdhury, the father of the plaintiff and the defendant. The plaintiff is claiming absolute title over the suit land and the schedule A property in exclusion of his other brothers as the deed stands in his name.

5. On the death of the defendant, his widow and two sons were substituted in the suit. The substituted defendants contested the suit with the same defence of their predecessor-in-interest. In support of their said defence, they proved documentary evidences e.g. Exhibit-‘A’(Registered Agreement of family settlement), Exhibit-‘B’(Municipal building plan), Exhibits-‘C’, ‘D’ and ‘E’ (Income Tax returns), Exhibit-‘F’ series (Copy of R.S.R.O.R. of Mouza-Choprajhar) and Exhibit- ‘G’ (Electricity Bill).

6. The learned Trial Judge had dismissed the suit holding *inter alia* that the plaintiff has failed to prove that at the relevant point of time, he had sufficient income to purchase the suit land and to construct Schedule A property thereon. The learned Trial Judge giving much credence to the deed of family settlement(Exhibit ‘A’) held that there was a joint family business which was separated after the death of the father of the parties, therefore whatever the

plaintiff had acquired, it will be presumed to have been acquired from the common stock of the family, as such the plaintiff cannot claim exclusive ownership over the schedule A property, besides he is not entitled to the benefit of Section 4(3)(b) of the unamended The Benami Transactions(Prohibition) Act, 1988,(hereinafter referred to as the 'said Act of 1988' in short) rather he is a mere trustee for his two brothers and other family members in respect of the said property.

7. The plaintiff aggrieved by the judgment and decree of the learned Trial Judge, has preferred the connected appeal. The Appeal Court below has decreed the suit reversing the judgment and decree of the learned Trial Judge. The appeal Court below has held that the defendants have failed to produce any evidence in support of the claim that at the relevant point of time, the father had funds to acquire the suit land and to construct a moderate structure on the said land or that he came to India from East Pakistan with such funds or that he had any specific source of income from business except the oral evidence of the D.W.₁ that the plaintiff and his father used to run small business in village huts(weekly market), besides it has not been proved that the suit land was purchased by the father for the benefit of his family members. The Appeal Court below considered the partnership deeds dated January 01, 1975(Exhibit-'6') and dated February 07, 1979 (Exhibit- '7') as well as the family settlement dated January 23, 2009 (Exhibit- 'A') and held that those partnership businesses and the family settlement are not related with the Schedule A property. The Appeal Court below discarded the income tax returns

(Exhibits 'C', 'D' and 'E') on the ground that the expenses shown in the said returns cannot be related with the expenses allegedly incurred by the defendants to renovate the Schedule A property.

8. Mr. Haradhan Banerjee, learned senior advocate for the appellants submits that the father from his own funds, had purchased the suit land in the name of his eldest son for the benefit of his entire family and thereafter had put a moderate structure on the said land, subsequently other family members contributed in renovation of the said structure but the plaintiff is claiming absolute title over the suit land and the schedule A property as the deed of purchase (Exhibit-1) stands in his name. The plaintiff was about 22 years old at the time of the purchase of the suit land and was still pursuing his education as such it is highly improbable that he had the capacity to pay the consideration price to purchase the suit land, the finding of the learned Trial Judge on this score was absolutely justified but the Appeal Court below, without considering the documents proved by the defendants in support of their said defence, has reversed the judgment and decree of the learned Trial Judge. He further submits that the defence of the defendants squarely comes within the purview of Section 4(3)(b) of the said Act of 1988.

9. Mr. Banerjee further submits that admittedly the father used to run a small business in village huts with the plaintiff, besides the father, till his death, was the partner of the family partnership businesses in the name of J.N. Chowdhury and Co. and the deed in respect of the said partnership business

was proved in the suit being Exhibit-‘6’ therefore the finding of the Appeal Court below that it cannot be presumed that the father had a source of income at the relevant point of time to purchase the suit land as no document regarding the joint business of the plaintiff and his father was produced, is absolutely perverse as such amenable to an appeal under Section 100 of the Code of Civil Procedure, 1908. In support of his such contention, Mr. Banerjee places reliance on the decisions of the Hon’ble Supreme Court in the case of **MUNICIPAL COMMITTEE, HOSHIARPUR vs. PUNJAB STATE ELECTRICITY BOARD AND OTHERS** reported in (2010) 13 Supreme Court Cases 216, **AZGAR BARID(DEAD) BY LEGAL REPRESENTATIVES AND OTHERS vs. MAZAMBI ALIAS PYAREMABI AND OTHERS** reported in (2022)5 Supreme Court Cases 334, **CHANDRABHAN (DECEASED) THROUGH LRS AND OTHERS vs. SARASWATI AND OTHERS** reported in AIR 2022 Supreme Court 4601. The decision of the Hon’ble Supreme Court in the case of **DILBRAGRAI PUNJABI vs. SHARAD CHANDRA** reported in 1988(Supp) Supreme Court Cases 710 is relied on for the proposition that the High Court, in an appeal under Section 100 of the Code has the power to examine the entire relevant evidences on record having direct bearing on the disputed issue giving rise to a substantial question of law.

10. He further argues that the defendants contested the suit with the defence that the plaintiff always treated the Schedule A property as the joint property of the family for the use and benefit of its members and to bring home the said defence, had proved the Record of Rights of the suit land[Exhibit- F(series)]

which records the name of the deceased defendant along with the plaintiff, the building plan of the two-storied structure on the suit land(Exhibit-B) which contains the names of all the brothers and the income tax returns of the deceased defendant (Exhibits C, D and E) demonstrates contribution of the deceased defendant in renovation of the said two storied structure.

11. He further submits that the Appeal Court below has erroneously placed the burden on the defendants to prove that the father had funds to purchase the suit land and to build a moderate structure thereon though on the proof of existence of the joint business of the family, such onus shifts on the plaintiff, the Appeal Court below therefore has committed a substantial error of law in reversing the judgment and decree of the learned Trial Judge. He cites the decision of the Privy Council in the case of **APPALASWAMI vs. SURYANARAYANAMURTI AND OTHERS** reported in **AIR(34) 1947 Privy Council 189**, the decisions of the Hon'ble Supreme Court in the case of **K.V. NARAYANASWAMI IYER vs. K.V. RAMKRISHNA IYER AND OTHERS** reported in **AIR 1965 Supreme Court 289** and in the case of **G. NARAYANA RAJU (DEAD) BY HIS LEGAL REPRESENTATIVES vs. G. CHAMARAU AND OTHERS** reported in **AIR 1968 Supreme Court 1276** as well as the decision of the Hon'ble Division Bench of this Court in the case of **AMRITA LAL SEN AND ORS. vs. SURATH LAL SEN AND ORS** reported in **AIR 1942 (Cal) 553** for the proposition that where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden is

upon the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property.

12. He then contends that it would appear from the Record of Rights of the suit land[Exhibit –‘F’(series)], the names of the sons and the father have been recorded as Sikmi tenants under the superior landlord, such tenancy gives the tenants a permanent right to hold the land comprised in such tenancy, as such the plaintiff cannot claim recovery of possession of the Schedule B property from the deceased defendant or from his heirs. The defendants though have not pleaded their such defence in the written statement but the Court would be slow in throwing the defence for lack of pleadings when materials are available on record and the parties went to trial on the said materials, in support of such contention, the decisions of the Hon’ble Supreme Court in the case of **FIRM SRINIVAS RAM KUMAR vs. MAHABIR PRASAD AND OTHERS** reported in **AIR(33) 1951 Supreme Court 177, KIDAR LALL SEAL AND ANOTHER vs. HARI LAL SEAL** reported in **AIR 1952 Supreme Court 47, NAGUBAI AMMAL & OTHERS vs. B. SHAMA RAO & OTHERS** reported in **AIR 1956 Supreme Court 593** and **BHAGWATI PRASAD vs. CHANDRAMAUL** reported in **AIR 1966 Supreme Court 735** are relied on. The decision of the Hon’ble Supreme Court in the case of **GURUCHARAN SINGH VS. KAMLA SINGH AND OTHERS** reported in **(1976) 2 Supreme Court Cases 152** is relied on for the proposition that a new plea of law can be raised based on undisputed and proven facts, even before the Court of last resort.

13. Mr. Banerjee, to illustrate the nature of Sikmi tenancy and the right of such tenants, relied on the following decisions:-

- i. **GOPAL MANDAL vs. JAPAI SANKHARI AND ORS.** reported in **(1917-18) 22 CWN 618**
- ii. **NAHAR LAL SHAH AND ANR. vs. BAIJ NATH SHAH AND ORS.** reported in **32 CWN 241**
- iii. **BAHAL SINGH vs. MUBARAK- UN-NISSA** reported in **1907 SCC OnLine All 17**
- iv. **DOMA SINGH AND OTHERS vs. JAIGOBIND PANDE** reported in **AIR 1931 Pat 361**
- v. **OEHAL MAHTON vs. NATHUNI RAM MARWARI AND ORS.** reported in **2006 SCC ONLINE Pat 209**
- vi. **BUGANI DEVI @ BUGNI DEVI vs. THE STATE OF BIHAR THROUGH THE COLLECOR, DISTRICT ARARIA & ORS.** reported in **2013 SCC ONLINE Pat 1055**

14. Mr. Surajit Nath Mitra, learned senior advocate for the respondent responding to the said argument of Mr. Banerjee submits that it is well settled position of law that the burden to prove the benami is on the person who alleges so, in support of such submission, reliance is placed on the decisions of the Hon'ble Supreme Court in the case of **THAKUR BHIM SINGH (DEAD) BY LRS AND ANOTHER vs. THAKUR KAN SINGH** reported in **(1980) 3 SCC 72**, in the case of **BINAPANI PAUL vs. PRATIMA GHOSH AND OTHERS** reported in **(2007) 6 Supreme Court Cases 100** and in the case of **MANGATHAI AMMAL (DEAD) through LRs and OTHERS vs. RAJESWARI AND OTHERS** reported in **(2020) 17 SCC 496**.

15. He further submits that the existence of a joint family does not lead to a presumption that the property held by any member of such family in his own name is also the joint property of the family, to give support to the said contention, he places reliance on the decision of the Hon'ble Supreme Court in the case of **D.S. LAKSHMAIAH AND ANOTHER vs. L. BALASUBRAMANYAM AND ANOTHER** Reported in **(2003) 10 SCC 310** and the decision of the Hon'ble Division Bench of this Court in the case of **KUNJA BEHARI RANA AND OTHERS vs. GOURHARI RANA AND OTHERS** reported in **AIR 1958 Calcutta 105**. He argues that it is an equally settled position of law that the intention of a coparcener to throw his personal property in the joint stock must be clear, such intention cannot be inferred from the acts of the said coparcener which may have been done from kindness and affection.

16. He further submits that the Appeal Court below has considered all the materials produced by the appellants in support of their defence in the suit and discarded those documents with specific findings. The building plan (Exhibit B) though contains the name of three sons of late Sarat Chandra Chowdhury but plaintiff alone had put his signature on the said plan as owner. The entries in the income tax returns (Exhibits 'C', 'D' and 'E') do not indicate that the expenses shown in the said returns are for the renovation of the Schedule A property. The Record of Rights in respect of schedule A property though records the name of all the sons of said late Sarat Chandra Chowdhury but it is not a document of title, besides the absence of the names of the daughters of

said late Sarat Chandra Chowdhury in the said Record of Rights indicates that the property was never treated as the joint property of the family.

17. He further submits that the learned Trial Judge had erroneously shifted the burden on the plaintiff to prove that he had the capacity to purchase the suit land. The appeal Court below, on appreciation of the respective cases of the parties and the materials-on-record, had rightly asked the defendant to prove their case that the plaintiff is holding the Schedule A property in the benami of his father for the benefit of all the members of the family. The defendants have miserably failed to discharge their said obligation. The appeal Court below on analysis of the two partnership deeds being Exhibits '6' and '7' has rightly held that the said partnership businesses are not related with the schedule A property inasmuch as the said deeds have been made for the purpose of running joint Tea garden businesses of the family. There is nothing on record to suggest that the father of the plaintiff had capacity to purchase the suit land. The appeal Court below was right in taking into consideration the Power of Attorney executed by the plaintiff in the year 1963(Exhibit -'8') to appoint his brother, the defendant as his constituted attorney to look after his cement business to come to the conclusion that the plaintiff had the capacity to purchase the suit land. None of the decisions cited on behalf of the appellants on this score are applicable in the facts and circumstances of the present case.

18. He further contends the defendants, as a last resort, sought to establish their non-evictable right from the Schedule B property on the alleged claim of Sikmi Tenancy but neither such claim was pleaded nor advanced at any stage before the Courts below, therefore, such claim does not deserve any consideration in the present second appeal, to lend support to the said contention, he cites the decision of the Hon'ble Supreme Court in the case of **SHEODHARI RAI AND ORS. vs. SURAJ PRASAD SINGH AND ORS.** reported in **AIR 1954 SUPREME COURT 758.**

19. Heard learned counsel for the parties, materials-on-record are closely scrutinised.

The plaintiff sought eviction of the defendant and his family members on the strength of his title over the suit land, the defendant sought to resist it with a defence that the suit land was purchased by the father from his own fund in the name of the plaintiff but for the benefit of the entire family. In other words, a defence of Benami was put forward and such defence was available to the deceased defendant since it was taken prior to omission of sub-section (3) of section 4 of the said Act of 1988. It is well settled position of law that the burden to prove the transaction as benami lies on the party claiming it to be so [See **(1980)3 Supreme Court Cases 72(supra)**, **(2007) 6 Supreme Court Cases 100(supra)** and **(2020) 17 Supreme Court Cases 496 (supra)** cited by Mr. Mitra]. The learned Trial Judge had erroneously placed the said burden

upon the plaintiff by asking him to prove that he had the capacity to purchase the suit land at the relevant point of time.

20. The conditions to succeed in a plea of Benami are well-settled. The Hon'ble Supreme Court, at paragraph 18 of the case reported in **(1980)3 Supreme Court Cases 72 (supra)** relied on by Mr Mitra, has summarized the tests to sustain such defence, the said paragraph of the said judgment is quoted below: –

“...18. The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus: (1) the burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction; (2) if it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary; (3) the true character of the transaction is governed by the intention of the person who has contributed the purchase money and (4) the question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motives governing their action in bringing about the transaction and their subsequent conduct, etc...”

21. The burden to prove that the transaction is Benami obliges the defendants to prove that the purchase money came from the father. Except a small business of the plaintiff and his father at the village huts, there is nothing on record to prove that the father was engaged in any other financial activities at the time of purchase of the suit land, moreover the income of the

father from the said business is also absent in the record. The plaintiff proved two partnership deeds, one is of January 01, 1975 (Exhibit-‘6’) and the other is of February 07, 1979(Exhibit-‘7’). In Exhibit-‘6’, there is a reference of a partnership business of the father and his sons under the name and style “J.N. Chowdhury & Co.” which was started with effect from November 18, 1969. The plaintiff and his brothers, after the death of the father, to continue the said partnership business, executed the Exhibit-‘6’. The plaintiff and his brothers with some third parties, by virtue of Exhibit- ‘7’ formed another partnership business under the name and style ‘Messrs. Chowdhury Saha & Associates’. All the partnership businesses were not in existence at the time of purchase of the suit land as such it is preposterous to suggest that the purchase money came from the said partnership businesses.

On the other hand, the plaintiff has proved the Power of Attorney dated November 26, 1963(Exhibit-‘8’) whereby he appointed the defendant, who came from East Pakistan, to look after his cement business, therefore the Appeal Court below, relying on Exhibit- ‘8’ has rightly concluded that it is believable that the plaintiff had an income at the relevant point of time to purchase the suit land.

22. The Hon’ble Supreme Court in the case reported in **(2003) 10 SCC 310(supra)** relied on by Mr. Mitra, has held that property cannot be presumed to be joint family property merely because existence of joint family, burden to prove the property to be joint lies on the person who asserts so and clear

intention to abandon the separate rights in the property must be proved. Similar proposition of law has been laid down by the Hon'ble Division Bench of this Court in the case reported in **AIR 1958 Calcutta 105(supra)**, cited by Mr. Mitra. The learned Trial Judge inferred the jointness of the suit land and the structure thereon on the basis of the Family Settlement dated January 23, 2009 (Exhibit 'A') but neither the said suit land nor the said structure thereon was the subject matter of the said Family Settlement and such exclusion proves that the plaintiff or the heirs of Sarat Chandra Chowdhury did not treat the said properties as their joint properties.

23. The decision of the Privy Council reported in **AIR(34) 1947 Privy Council 189(supra)**, the decisions of the Hon'ble Supreme Court reported in **AIR 1965 Supreme Court 289(supra)** and reported in **AIR 1968 Supreme Court 1276(supra)** as well as the decision of the Hon'ble Division Bench of this Court reported in **AIR 1942 (Cal) 553(supra)** cited by Mr. Banerjee for the proposition of law that where it is established that the family possessed some joint property which may have formed the nucleus from which the property in question may have been acquired, the burden is upon the party alleging self-acquisition to establish that the said property was acquired without the aid of joint family property, are misplaced in the facts and circumstances of the present case inasmuch as in the present case, the existence of the joint property or nucleus to acquire the suit land and the Schedule A property has not been proved.

24. The Appeal Court below has considered the Income Tax Returns of the defendants (Exhibits-‘C’, ‘D’ & ‘E’) and has rightly held that the entries made therein cannot be related with the alleged expenditure incurred by the defendants in renovating the Schedule A property on the suit land.

The Appeal Court below has also considered the Building Plan (Exhibit-‘B’) and has rightly held that the said Plan was signed by the plaintiff as the owner of the premises, mere mentioning of the name of the defendant in the said Plan is of no consequence.

This is now a settled position of law that the Record of Rights(Exhibit-‘F’ series) neither creates nor extinguishes title, therefore, the recording of the name of the defendant in the Record of Rights cannot confer a title upon him as against the Registered Deed of Purchase(Exhibit-‘1’) standing in the name of the plaintiff.

25. There is no dispute to the proposition of law that if a plea is not specifically made but is impliedly covered by an issue framed in the *lis* and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings, would not necessarily disentitle a party from urging it in appeal but subject to the condition that the said plea is satisfactorily proved by evidence. In the present case, the defendant never put forward the defence of Sikmi tenancy and there was no issue framed in the trial remotely or incidentally connected with such defence. The defence of Sikimi tenancy sought to be advanced in the present Second Appeal is not

admitted by the respondent rather the respondent heavily disputed the said defence of the appellants, therefore the defence that the appellants being Sikmi tenants, cannot be evicted from the Schedule B property does not deserve any consideration at this stage, consequently the decisions of the Hon'ble Supreme Court in support of such defence cited by Mr. Banerjee e.g. **AIR(33) 1951 Supreme Court 177(supra), AIR 1952 Supreme Court 47(supra), AIR 1956 Supreme Court 593(supra), AIR 1966 Supreme Court 735(supra)** cannot have any application in the facts and circumstances of the present case.

In view of the above, the decisions cited by Mr. Banerjee to illustrate the scope and nature of the Sikmi tenancy e.g. **(1917-18) 22 CWN 618 (supra), 32 CWN 241(supra), 1907 SCC OnLine All 17(supra), AIR 1931 Pat 361(supra), 2006 SCC ONLINE Pat 209 (supra)** and **2013 SCC ONLINE Pat 1055 (supra)** need not be discussed.

26. The proposition that a pure question of law, going to the root of the case, could be raised even before the Court of last resort is also not in dispute but such question of law must be based on undisputed and proven facts and with a rider that opposite side is not taken by surprise or is otherwise unfairly prejudiced but in the instant case, neither of the said conditions are satisfied inasmuch as the defence of Sikmi tenancy is based on disputed facts and the plea is taken to the prejudice of the respondent, as such the decision of the Hon'ble Supreme Court reported in **(1976) 2 Supreme Court Cases**

152(supra) laying down the said proposition cited by Mr. Banerjee is of no help to his clients.

27. Both the parties sought to apply Doctrine of Non-Traversal to demonstrate that there are admissions of the one side to the case of the other side and in support thereof, they relied on the Division Bench decision of this Court in the case of **A.E.G. CARAPIET vs. A.Y. DERDERIAN** reported in **AIR 1961 (Cal) 359**. In addition, Mr. Banerjee, for the selfsame proposition has cited the decision of the Hon'ble Supreme Court in the case of **MUDDASANI VENKATA NARSAIAH(DEAD) THROUGH LRS. vs. MUDDASANI SAROJANA** reported in **AIR 2016 Supreme Court 2250** but in view of the limited scope of the present Second Appeal, there is hardly any space to scrutinize the evidence of the parties to apply the said Doctrine in the present case, therefore, the ratio of law laid down in those cited judgments cannot be applied in the facts and circumstances of the present case.

28. There is also no dispute with regard to the ratio of law laid down by the Hon'ble Supreme Court in the decisions reported in **(2010) 13 Supreme Court Cases 216**, **(2022)5 Supreme Court Cases 334**, **AIR 2022 Supreme Court 4601** and **1988(Supp) Supreme Court Cases 710** cited by Mr. Banerjee that the High Court in an appeal under Section 100 of the Code has the power to reverse findings of the appellate Court if such findings are based on non-consideration of the materials-on-record but the said ratio is also not applicable in the facts and circumstances of the present case inasmuch as the

appeal Court below upon consideration of the entire materials on evidence has reversed the judgment and decree of the learned Trial Judge, therefore, the impugned judgment and decree cannot be faulted for non-consideration of the materials-on-record and as a result the argument of Mr. Banerjee that it suffer from perversity does not appeal to this Court.

29. The appellants in this appeal, have filed an application being **CAN 08 of 2022** for reception of the latest information of the Mouza under which the suit land is situated and Dakhila of 'Khajna' in respect of the suit land as additional evidences. The appellants are praying admission of those evidences in the present appeal to demonstrate that their names are still appearing in the relevant Record of Rights and they are paying 'Khajna'.

The Record of Rights of the suit land have already been admitted as evidences in the suit as Exhibit- 'F'(series), moreover, the payment of 'Khajna' has got no bearing in answering the substantial questions of law framed in the present second appeal. The documents sought to be produced as additional evidences though have come in the hands of the appellants during the pendency of the appeal but those, being irrelevant, need not be admitted as additional evidences in the appeal.

In view of the discussions made above, I am of the opinion that no such substantial questions of law as formulated is involved in the present second appeal, consequently **S.A. 110 of 2013** and the connected application being **CAN 08 of 2022** are dismissed. There shall be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU, J.)

LATER

Let the Lower Court records be sent down to the Court below immediately by Special messenger at the costs of the respondent, such costs be put in within a week from date.

(BISWAJIT BASU, J.)