

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FAT 125 of 2025
With
CAN 2 of 2025

Sri Lakshi Kanta Panda
-vs-
Sri Sudipta Panda

For the appellant : Mr. Yudhisthir Maity

For the respondent : Sk. Rejaul Alam

Heard on : July 2, 2025.

Judgment on : July 2, 2025

Sabyasachi Bhattacharyya, J.:

1. In view of the short conspectus of the appeal, we take up the appeal for hearing along with the application.
2. The preliminary decree passed in a partition suit has been challenged by the defendant therein.

3. Learned Counsel appearing for the appellant submits that the appellant has been in exclusive possession over the entire suit property since long and as such, the decree passed in favour of the plaintiff is bad in law.
4. Learned Counsel appearing for the plaintiff/respondent points out the findings in the impugned judgment to the effect that the defendant/appellant, as DW1, admitted during his cross-examination that the plaintiff is the rightful owner to the extent of 4 decimals of land and 3 decimals of land, totalling an area of 7 decimals of land, in the suit plot nos. 957 and 958. He had further admitted that he had no objection if the suit property is partitioned by metes and bounds between himself and the plaintiff.
5. Upon a careful perusal of the materials on record, we find that such admission not only binds the defendant but also corroborates the deed of gift and deed of sale in favour of the plaintiff, which were also marked as Exhibits in the suit. Thus, the finding of the learned Trial Judge while passing the preliminary decree, to the effect that the plaintiff is entitled to declaration of his right, title and interest over 7 decimals of

land by virtue of the gift and sale in his favour, is absolutely justified.

6. Although learned Counsel for the defendant/appellant seeks to submit before the court that the defendant/appellant is of advanced years and is hard of hearing and as such, was not exactly aware of the tenor of the recording of his cross-examination, we are of the opinion that there is no scope of such misunderstanding, since the law is very clear on the subject that in the event a witness has any objection to the recording of the evidence adduced by him/ her, it is for the said witness, directly and/or through her or his advocate, to immediately file an application objecting to such recoding in the trial court itself.
7. Having not done so, the appellant cannot take the said point for the first time in appeal. We also find that the said issue was not raised before the learned Trial Judge even at the time of hearing and hence, we cannot lend any credence thereto. Thus, there is no scope of interference in the appeal.
8. Accordingly, FAT 125 of 2025 is dismissed on contest, thereby affirming the impugned judgment and preliminary decree dated August 30, 2023 passed by the learned Civil Judge (Senior

Division), First Court at Tamruk, District – Purba Medinipur in
Title Suit No. 100 of 2021.

9. There will be no order as to costs.
10. A formal decree be drawn up accordingly.
11. CAN 2 of 2025 is also disposed of consequentially.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)