

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 95 of 2022

Jahida Bewa and Ors.
-vs-
Jakera Khatun and Ors.

For the appellants : Mr. Pinkai Dhole,
Mr. Tanmoy Mukherjee,
Mr. Rabindra Kumar Pathak,
Ms. Srijita Mondal

For the respondents : Mr. Partha Pratim Roy,
Mr. Lutful Haque,
Ms. Taharima Khatun

Heard on : June 12, 2025.

Judgment on : June 12, 2025.

Sabyasachi Bhattacharyya, J.:

1. The present challenge has been preferred against a preliminary decree passed in a partition suit.

2. Upon hearing learned Counsel for the parties, we find that the impugned judgment cannot be justified from any perspective.
3. As per the plaint case, one Chameli was the original owner of the suit property, comprised of Plot Nos. 574/872 and 574/1103 in CS Khatian No. 256.
4. According to the plaint case, after the demise of Chameli, the property devolved upon her brother Gazi after whom his sons, one Gofur and one Asiruddin, became the joint owners. According to the plaintiffs, Gofur executed a “hibanama” (gift deed) in favour of his three sons.
5. The said hibanama, according to the plaintiffs, included Plot No. 574/872 and intended to include Plot No. 574/1103, although erroneously, instead of 574/1103, the plot no. was mentioned as 574/874.
6. The defendants categorically denied the contentions in the plaint almost in its totality and relied on certain documents by which transfers had been made *inter se* between the branch of the heirs of Asiruddin, comprised primarily of the defendants.
7. In the first round of litigation, the learned Trial Judge had dismissed the suit on the ground of non-joinder of the daughters of Gofur, who, according to the learned Trial Judge,

were necessary parties, being heirs of Gofur and co-owners of the suit property. A challenge was preferred against the said decree before this court. In the said appeal, a coordinate Bench of this Court directed addition of the said daughters as parties to the suit and granted liberty to the plaintiffs to file an amended plaint accordingly. Liberty was also granted to the added parties to file their written statements and to the original defendants to file their additional written statements in respect of the amended plaint.

8. After remand, the second round of litigation started, culminating in the present impugned judgment and decree. A bare perusal of the impugned judgment indicates that the learned Trial Judge completely failed to adhere to the remand order, since the shares of the daughters of Gofur, the added defendants, were not declared at all. Apart from that, as rightly contended by learned Counsel for the appellants, there are several calculation errors in the shares of parties even as per the findings of the learned Trial Judge, which do not tally with the ordering portion of the judgment.
9. Moreover, we find several discrepancies in the materials produced before the trial court as well. From the exhibits of the

plaintiffs themselves, we find that apart from the suit plots, Plot No. 574/874 was also one of the properties in which the parties' names were recorded as joint owners in the capacity of 'raiyats'. The said plot, however, was not brought into the hotchpot of the suit, thereby rendering the frame of the suit bad.

10. Other than the above two discrepancies, we also find that the name of one Ghurni Bewa (a non-party to the present litigation) was recorded in one of the Exhibits, being Exhibit 3, the CS Records in respect of Plot Nos. 574/872 and 574/874 as a 'raiyat' along with Chameli, the latter being mentioned to have 'mokarari' rights.
11. Upon a careful perusal of the materials on record, we find that apart from the hibanama (Exhibit 1), which started the narrative of title from Gofur, no prior chain deed to show the antecedent title of the alleged predecessors-in-interest of Gofur, being Gazi and Chameli respectively, have been produced in the court below.
12. Insofar as Plot No. 574/874 is concerned, the plaintiffs have alleged in the plaint that the said property was transferred by Chameli in favour of third parties, in support of which,

however, no title deed or transfer deed has been exhibited in the trial court as well. The said plot, however, was recorded in the name of some of the parties to the present suit, but has not been included in the hotchpot of the partition suit.

13. In the absence of any other evidence, we find that at least the shares of the daughters of Gofur ought to have been declared in the preliminary decree, in the event the trial court, upon a complete consideration of the exhibited documents, which are primarily Records of Rights, found some semblance of title of the parties or their predecessors-in-interest.
14. Indicators of such rights are found in some of the exhibits, which mentioned Chameli to have mokarari rights in respect of some of the plots whereas the rights of Gofur and the heirs of Asiruddin have also been mentioned in some of the exhibits.
15. However, Plot No. 574/874, in the absence of any document to show that the same was transferred by Chameli at any point of time, would then be a joint property of the parties and ought to have been included in the hotchpot of the suit.
16. The learned Trial Judge, although substantially narrating the entire submissions of the parties and the evidence, was surprisingly cryptic in the reasoning portion of the judgment,

attributing no reasons whatsoever worth the name and also not advertng to any of the material evidence on record.

17. The learned Trial Judge merely observed that on perusal of the evidence, he found that the suit property had not been partitioned earlier and no other property of the parties was left to be brought within the hotchpot of the suit, thereby committing a perversity inasmuch as Plot No. 574/874 being mentioned in the exhibits of the plaintiffs themselves as a joint property was completely overlooked. Moreover, the basis on which the title of the parties was declared in respect of the suit plots was also omitted in the reasoning portion of the impugned judgment.
18. Apart from that, as discussed earlier, the shares of the daughters of Gofur were not declared despite the matter being remanded previously on the specific ground of non-joinder of the said daughters, directing them to be impleaded.
19. More importantly, the shares of the defendants, either independently from the plaintiffs or *inter se*, were also not declared in the teeth of the transfer deeds produced on behalf of the defendants.

20. Hence, we find that the impugned judgment is bad on all the above counts. In the event this court usurps the jurisdiction of the court of first instance and adjudicates the suit on merits on appreciation of evidence, the scope of appeal would be enlarged and both the parties would lose a forum of appeal.
21. Since the learned trial Judge did not advert to the germane evidence at all, in the event the appellate court decides the appeal on merits, it will arrogate to itself the role of the court of first instance.
22. Moreover, the evidence on record is rather insufficient to adjudicate the title of the parties and an opportunity ought to be given to both sides to bring on record further evidence to substantiate their respective cases and, if necessary, to amend their pleadings to that effect.
23. Accordingly, despite being conscious of the long pendency of the matter and the previous round of litigation, in view of the learned Trial Judge having failed to adhere to the remand order in any manner and / or to undertake a proper appreciation of the evidence on record, we are constrained to remand the matter again.

24. Accordingly, FAT 95 of 2022 is allowed on contest, thereby setting aside the impugned judgment and preliminary decree dated December 23, 2021 passed by the learned Civil Judge (Senior Division), Chanchal, District: Malda in Partition Suit No. 57 of 2013 and remanding the suit to the trial court for a fresh adjudication upon rehearing on merits. The learned Trial Judge shall grant opportunity to the plaintiffs to amend the plaint, thereby incorporating Plot No. 574/874 as one of the suit properties, alternatively, introducing further pleadings to substantiate the allegation that the said property was transferred by Chameli in favour of third parties.
25. In the event any amendment is allowed at the instance of the plaintiffs, the defendants shall also be given an opportunity to file further additional written statements restricted to the amended plaint.
26. The learned Trial Judge, if the parties so desire, shall permit both sides to adduce further evidence, either oral or documentary, to substantiate their respective cases before coming to a final conclusion.
27. In view of the long pendency of the matter, it is expected that the entire exercise shall be concluded within one year from the

date of communication of this judgment and order to the trial court.

28. No order as to costs.
29. The trial court records be sent down immediately by special messenger at the cost of the appellants, to be deposited within a week from date.
30. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)