

23.05.2025
SI No.9
Court No.8
(gc)

**FA 188 of 2025
CAN 3 of 2024**

**Md Aslam & Ors.
Vs.
Anwari Begum & Ors.**

Mr. Sundar Gopal Bhattacharyya
...for the Appellants/Petitioners.
Mr. Md. Shah Minhaj Uddin,
Mr. Md. Mohiuddin
...for the Respondent
No.1, 2,3, 5, 6 and 7.

1. It appears that the suit was filed to challenge a deed of partition executed almost 26 years back between the predecessor-in-interest of the plaintiffs and the defendants wherein the suit property has specifically and particularly separated and settled amongst themselves. It appears that the suit property was partitioned on 21st August, 1991 by a registered deed of partition. The said partition deed was registered in the office of A.D.S.R. The defendants were allotted 'Kha' schedule property and plaintiffs' mother had been allotted schedule 'Ga' of the deed of partition. The only contention appears to be that the defendants were raising illegal construction in the property. The suit at best could have been treated as suit for injunction restraining the defendants from raising illegal construction. In such a situation, it has to be

ascertained whether there has been any encroachment with regard to the portion allotted to the predecessor-in-interest of the plaintiffs. However, the said partition deed could not have been the basis without alleging illegal construction and we do not find any reason at this stage to grant any order of injunction in favour of the plaintiffs.

2. The learned Single Judge, in our view, was right in coming to a finding that having regard to the fact that the partition deed was registered and acted upon by and between the parties, there is nothing really left in the suit to be decided as the partition deed could not have been challenged at this distant point of time.
3. The suit is *ex facie* barred by laws of limitation and, in our view, the learned Single Judge was right in relying upon the decision of the Hon'ble Supreme Court in ***Re T. Arivandandam Vs. T.V. Satyapal & Another*** reported at ***AIR 1977 SC 2421*** in dismissing the suit.
4. A recent decision of the Hon'ble Supreme Court in ***Uma Devi & Ors. Vs. Anand Kumar & Ors.*** reported at ***2025 SCC OnLine SC 703*** has been relied upon by the learned Counsel for the respondents where a

vexatious litigation, namely, a suit filed after 55 years was dismissed on the ground that it is a vexatious proceeding and required to be nipped in the bud as observed in **Re T. Arivandandam** (supra).

5. There is no dispute that Lutfanessa Bewa was the original owner in possession of the property described in schedule A of the plaint. She died intestate sometimes in the year 1960 leaving behind her legal heirs, son Nazir Ahmed and daughter Sahibjan Bibi @ Channo Begum and both of them succeeded to the estate of Lutfanessa Bewa. In the meantime, Nazir Ahmed and Sahibjan Bibi died leaving behind their respective heirs upon whom the suit property devolved and it is these legal heirs who have entered into a partition deed duly registered on 21st August, 1991. The existence of such partition deed was suppressed by the plaintiffs in the injunction application.
6. The learned Single Judge has considered that the said partition deed was fraudulently obtained or executed, could not form the subject matter of challenge after 26 years and, moreover, one of the plaintiffs was a witness to the said deed of partition. There was no contemporaneous challenge to the said

partition deed nor any criminal complaint was lodged to show that the signature of their mother was obtained fraudulently or the witness was forced to put its signature in the partition deed. Moreover, it appears that consequent upon the said partition deed, the properties have been separated and review records have been accordingly corrected.

7. On such consideration, we find that the suit to be vexatious and not maintainable following the decision of the Hon'ble Supreme Court in ***Uma Devi*** (supra).
8. The appeal fails.
9. Accordingly, the appeal and the connected application are dismissed.
10. However, there shall be no order as to costs.
11. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Smita Das De, J.)