

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Subhendu Samanta**

**F.A.T. No.262 of 2019
with
CAN 2 of 2024**

**Sri Prosad alias Ratul Banerjee
Vs.
Sri Deva Prosad Banerjee and Ors.**

For the appellant	:	Mr. ParthaPratim Roy, Mr. Dyutiman Banerjee, Mr. Vishal Mallick
For the respondents	:	Mr. Aniruddha Chatterjee, Mr. Tanmoy Mukherjee, Mr. Souvik Das, Mr. K. Raihan Ahmed, Mr. Soumava Santra
Hearing concluded on	:	07.01.2025
Judgment on	:	16.01.2025

Sabyasachi Bhattacharyya, J.:-

1. The appeal arises at the instance of the plaintiff out of a suit for declaration that a registered deed of partition bearing no.834 dated March 9, 2015 is a forged, manufactured and invalid document with a finding that the plaintiff has 2/5th share in the properties covered by

the partition deed, for permanent injunction restraining the defendants from disposing of the suit properties and making any construction, and consequential reliefs. In the said suit, the defendant/respondent nos.1 to 3 filed a written statement along with a counter claim, seeking partition of 92 decimals in RS Plot No.1664.

2. The brief facts of the case are that one Amiyo Kumar Banerjee was the original owner of the entire property, comprised of the suit property and the subject property of the counter claim. On the demise of the said Amiyo, a written family settlement deed was prepared amongst his heirs in the year 1981, which according to the plaintiff was neither registered nor acted upon. In 1996, another family settlement deed was entered into between all the parties to the present suit, which was also not registered and, according to the plaintiff, not acted upon.
3. The subject-matter of the 1996 deed was divided into Schedule 1, comprised of RS Plot Nos.1814, 1815 and 1816 to the extent of 1.30 acres and RS Plot No.1813 to the extent of 29 decimals. Schedule 2 of the said deed comprised of RS Plot No.1664 to the extent of 92 decimals. As per the said deeds, 'Anabila Villa', a building standing on RS Plot No.1664, which comprised of Schedule 2 of the deed and is the subject matter of the counter claim, went to the share of the plaintiff whereas 'Swapan Puri' was a construction standing on Schedule 1 of the said deed, which is the suit property.
4. The plaintiff claims that no valid partition was effected either by the 1981 deed or the 1996 deed. However, the defendants, among

themselves, executed a registered deed of partition on March 9, 2015, thereby partitioning the subject-matter of the suit property, where ‘Swapan Puri’ stands, between themselves, without impleading the plaintiff as a party. It is argued on behalf of the plaintiff that in the absence of any valid partition by metes and bounds, either by a registered deed or by a decree or order of a court, no partition ever took place between the parties and the entire property, comprised of both the subject-matters of the suit and the counter claim, housing ‘Swapan Puri’ and ‘Anabila Villa’ respectively, remained joint properties.

5. Learned counsel for the plaintiff/appellant contends that in terms of Section 14 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as “the WBLR Act”), without a registered partition deed or a valid decree of a court of law, no partition can be effected in West Bengal.
6. In support of his contention, learned counsel cites a co-ordinate Bench judgment of this Court in *Md. Nazrul Islam and Another v. Sri Uday Chakraborty and Others*, reported at 2017 SCC OnLine Cal 1603, where the Division Bench reiterated that Section 14 of the WBLR Act, as amended in the year 2002, cannot nullify the effect of oral partition, if it is found that the joint property belonging to the co-sharers were partitioned amicably prior to August 7, 1969. By necessary implication, it is argued, mutual family arrangements entered into after the said date, from when the relevant amendments in Section 14 of the

WBLR Act came into effect, do not pass any title or create any interest on the basis of such partition.

7. Learned counsel also cites *Kartick Chandra Mandal v. Netai Mondal (Dead) by Lrs. and Others*, reported at (2009) 2 SCC 105, where the Supreme Court held that there is no doubt so far as Section 14 of the WBLR Act came into force in West Bengal with effect from June 7, 1965 except in the areas transferred from Bihar to West Bengal and therefore, after the introduction of the aforesaid provision, the partition of a holding can be effected only by a registered instrument or by a decree or order of a court.
8. Learned counsel for the appellant next cites *K. Arumuga Velaiah v. P.R. Ramasamy and Another*, reported at (2022) 3 SCC 757 and *Korukonda Chalapathi Rao and Another v. Korukonda Annapurna Sampath Kumar*, reported at (2022) 15 SCC 475, in both of which, a previous judgment of the Supreme Court in the case of *Kale and Others v. Deputy Director of Consolidation and Others*, reported at (1976) 3 SCC 119, was considered. The Supreme Court, in both the cited judgments, came to the conclusion that if right, title and interest were created presently by virtue of the deed-in-question, the same is compulsorily registrable under Section 17 of the Registration Act, 1908.
9. It is further argued that although from the evidence of P.W.1, the plaintiff/appellant, it might be construed that a part of the property in RS Plot No. 1664 was transferred by the plaintiff and a petrol pump has been started on a portion of 'Anabila Villa', the same was not in terms

of either the 1981 or the 1996 deeds but pursuant to a gift deed executed by the mother of the parties in favour of the plaintiff and the petrol pump is situated within the share of the plaintiff covered by such gift deed.

10. Learned counsel for the appellant next argues that the objection of the defendants as to the bar under Section 34, proviso of the Specific Relief Act, 1963 is not tenable in the eye of law, since the said proviso contemplates only “further” reliefs. It is argued that the expression “other” reliefs are not covered by the proviso. Hence, only if a suit for declaration is filed without “further” reliefs being sought, despite the plaintiff being capable to seek so, the suit is barred under the said provision. In the present case, partition is an “other” relief and the further relief of permanent injunction was duly sought by the plaintiff. Thus, despite partition being not claimed, the suit is not barred by the proviso to Section 34 of the Specific Relief Act. In support of the said contention, learned counsel cites a Division Bench Judgment of this Court in the matter of *Joy Narayan Sen Ukil v. Srikantha Roy and Others*, reported at XXVL CWN 206, where such distinction between “other” and “further” relief was drawn by the court.
11. Learned senior counsel appearing for the respondent controverts the submissions of the plaintiff. It is argued that the appellant, as P.W.1, categorically admitted that he acted upon the family settlement deeds of 1981 and 1996 by dealing with his portion of the property relating to ‘Anabila Villa’ pursuant to the said deeds.

- 12.** It is argued that a family arrangement stands on a different footing from partition between strangers. It was held in *Kale (supra)* that family arrangements are governed by special equity peculiar to them and would be enforced, if honestly made, to maintain unity and homogeneity of the family. Even where the court finds that a 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 a party to the family arrangement who seeks to unsettle the settled disputes and claims by revoking the said family arrangement under which he himself enjoyed some material benefits.
- 13.** It is argued that in the subsequent judgments of 2022 cited by the plaintiff/appellant, the Supreme Court did not overrule the said ratio of *Kale (supra)*.
- 14.** Rather, even in the teeth of Section 14 of the WBLR Act, the distinction drawn in law between a family arrangement and other partition deeds has been sustained. Family arrangements belong to a different category altogether and since there is no doubt in the present case that the 1996 deed, containing such family arrangement, was acted upon by the parties, the plaintiff is debarred by the principles of estoppel from re-agitating such issue.
- 15.** Learned senior counsel for the appellant cites *Tulasidhara and Another v. Narayanappa and Others*, reported at (2019) 6 SCC 409, where it was held, *inter alia*, that equitable principles such as estoppel, election, family settlement, etc., are not mere technical rules of evidence but

they have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice and in recent time, courts have been liberally relying on those principles.

16. Learned senior counsel cites a judgment of a learned Single Judge of this Court in *Dipsikha Chakraborty and Another v. Arun Kanti Basu and Sabita Basu, both deceased, substituted by their heirs and legal representatives Samita Bardhan Majumdar*, reported at 2022 SCC OnLine Cal 2385, where it was held that having admittedly intended to transfer the property in favour of the defendants in the said case, and admittedly taken a substantial amount of consideration, the plaintiffs therein were squarely bound by the doctrine of estoppel from resiling from their original intention to transfer the property in favour of the defendants, although there might have been a contractual restriction enforceable by the Government against the plaintiffs.
17. It is further argued that the suit is also barred under Section 34, proviso of the Specific Relief Act, since partition has not been specifically sought for by the plaintiff.
18. Learned counsel for the plaintiff/appellant, in rejoinder, further adds that the counter claim of the defendants is also not maintainable, being bad for partial partition even if the property was held to be joint, since it is restricted only to the portion allegedly occupied by the plaintiff.
19. Upon hearing learned counsel for both parties, the court comes to the following conclusions:

- 20.** The first issue which falls for consideration is whether the suit is barred under the proviso to Section 34 of the Specific Relief Act, 1963. The plaintiff/appellant is justified in pointing out that the language of the proviso is that no Court shall make any declaration where the plaintiff, being able to seek *further* relief than the mere declaration of title, omits to do so. The use of the expression ‘further’, as opposed to ‘other’, is of crucial importance.
- 21.** The former connotes something derived from or consequential upon the primary relief of declaration, as is the relief of permanent injunction which has been sought in the present suit.
- 22.** On the contrary, partition is an independent relief which cannot, strictly speaking, come within the ambit of “further” relief. It is entirely within the choice of the plaintiff whether to seek or not to seek partition of the property. It may very well be that a plaintiff remains content with joint possession of the property and no cause of action for partition has arisen at all. In such a case, there is no bar in the plaintiff seeking declaration of his title to the property to the extent of his/her share.
- 23.** The above proposition was reiterated by the Division Bench in *Joy Narayan Sen Ukil (supra)*. In the said case, the Division Bench distinguished between “other relief” and “further relief” and held that the further relief must be consequential relief in relation to the legal character or right as to the property which the plaintiff is entitled to and must be relief appropriate to and necessarily consequent on the

right of title asserted. Such relief must flow directly and necessarily from the declaration sought for.

- 24.** The Division Bench further observed that the position is different where the plaintiff is in joint possession of joint property to the extent of his share and is driven to ask declaratory relief because the extent of his share is disputed by a co-owner. In a case of this description, it was held that it is difficult to appreciate on what principle the plaintiff should be driven to seek for partition as a consequential relief. One of the incidents of joint property is that it may be enjoyed jointly; another incident is that its joint character is liable to be terminated. If a co-owner is content with joint property, as such, there is no reason why he should be driven to seek partition merely because his co-owner chooses to dispute the extent of his share. It may be that the plaintiff requires nothing more than a mere declaration and in those circumstances, to refuse to make the decree asked for will be a denial of justice.
- 25.** Borrowing the said principle, the plaintiff in the present case has sufficiently sought for further relief by way of permanent injunction to supplement his primary relief of declaration of his title to the extent of 2/5th share in the suit property.
- 26.** Moreover, the primary relief in the suit is a challenge to the registered partition deed between the defendants dated March 9, 2015 and declaration of his share is also a secondary relief. Hence, this Court holds that the suit is well maintainable, being not barred under the proviso to Section 34 of the Specific Relief Act, 1963.

- 27.** The defendants/respondents have also touched upon the issue of the plaintiff seeking a declaration that the deed of 2015 is forged and manufactured without having provided particulars regarding such forgery in the pleadings. However, although no particulars of forgery and manufacturing of the document has been provided, in the same breath, the plaintiff also sought for declaration that the deed dated March 9, 2015 is an invalid document. In the plaint, sufficient grounds have been made out for such prayer, as the plaintiff was not a party to the deed and the partition deed of 2015 is alleged to be bad for non-joinder of all the joint properties of the parties.
- 28.** Thus, such objection of the defendants/respondents has to be discounted.
- 29.** The primary question which has arisen in the present case is whether the partition deed of 2015 with regard to only the suit property, comprised of 'Swapan Puri', without impleading the plaintiff, is an invalid document.
- 30.** Such issue is premised on the underlying issue as to whether valid partition of the property took place by virtue of the prior two unregistered deeds of family settlement of the years 1981 and 1996.
- 31.** The law on the subject is somewhat fluid and is required to be discussed at length here.
- 32.** The first in the line of judgments governing the field which has been cited before us is *Kale (supra)*. In the said case, the Supreme Court, in no uncertain terms, held that family arrangements are governed by

special equity peculiar to themselves and would be enforced if honestly made. In the present case, the evidence of P.W.1 shows that he acted fully in terms of the 1996 deed by dealing with properties belonging to his share as per the said deed, pertaining to 'Anabila Villa' on RS Plot No.1664. Although the plaintiff/appellant has claimed that he did so in respect of the portion gifted by his mother, the said justification is flimsy, since the mother also gifted only an undemarcated share in the property. Thus, fact remains that the said deed of 1996 was acted upon by the parties.

- 33.** The Supreme Court, in *Kale (supra)*, goes on to observe that a family arrangement should be enforced to maintain unity and homogeneity of the family. Even if it suffers from a 'legal lacuna' or 'formal defect', the rule of estoppel is pressed into service and is applied to shut out the plea of a party who seeks to unsettle the settled disputes after having enjoyed some material benefits under it.
- 34.** However, in Clause (4) of Paragraph No.10 of the said judgment, the Supreme Court observed that registration is necessary if the terms of a family arrangement are reduced into writing and if the transfer of title happens by virtue of the said deed itself, and the deed does not merely record an arrangement already entered into between the parties. Clause (5) of the same paragraph lays down that the members who may be parties to the family arrangements must have some antecedent title and even if one of the parties has no title but under the arrangement

the other party relinquishes all its claims, the antecedent title must be assumed.

35. However, Clause (5) of Paragraph No.10 is not an isolated island but has to be read in conjunction with Clause (4). Thus, even in Paragraph No.10 of *Kale (supra)*, the Supreme Court reiterated the principle that family arrangements, despite being of a different category than ordinary transfers, if the devolution of title is *in praesenti*, by virtue of such document itself, the same has to be registered in order for it to create valid title in favour of the parties.
36. The confusion, however, is created by the observation of the Supreme Court in *Kale (supra)* that even if the family arrangement suffers from a “legal lacuna” or a “formal defect”, the rule of estoppel would be pressed into service.
37. Again, in Paragraph No.38 of the said judgment, the Supreme Court holds that in the said case, since the family arrangement was oral, the principle of no estoppel against the statute was not applicable as there was no document which was to be compulsorily registrable. Yet, as a rider, the Supreme Court added that assuming, however, that the said document was compulsorily registrable, the courts have generally held that a family arrangement, being binding on the parties to it, would operate as an estoppel by preventing the parties, after taking advantage under the same, to resile from the same or try to revoke it.

- 38.** The position in *Kale (supra)*, however, has been considered and explained by the Supreme Court itself in the subsequent judgments of *K. Arumuga Velaiah (supra)* and *Korukonda Chalapathi Rao (supra)*.
- 39.** In the former judgment, while considering *Kale (supra)*, the Supreme Court observed that in *Kale (supra)* it was held even if family arrangement could not be registered it could be used for collateral purpose, that is, to show the nature and character of possession of the parties in pursuance of the family settlement, and also for the purpose of applying the rule of estoppel which flowed from the conduct of the parties.
- 40.** A similar view was reiterated in *Korukonda Chalapathi Rao (supra)* in the light of Section 17 and Section 49 of the Registration Act.
- 41.** The conundrum which arises out of the above distinctive views of the Supreme Court is required to be resolved in the light of the doctrine of precedents.
- 42.** In *Kale (supra)*, the question which had fallen for consideration was whether an oral family arrangement could be given effect to. The Supreme Court held in Paragraph No.38 thereof that in view of the fact that the family arrangement there was oral and the mutation petition was merely filed for information in pursuance of the compromise, the document was, in any event, not required to be registered and therefore the principle that there is no estoppel against the statute did not apply to the said case at all.

- 43.** Going by the doctrine that a decision is a binding precedent for only what it actually holds as *ratio decidendi* and not what can be logically derived therefrom, *Kale (supra)* is not a binding precedent for the proposition that a document of family settlement by which present rights are conferred is not required to be registered to be given effect to. Such a view finds support in Clause (4) of Paragraph No.10 of the said judgment itself, where it was categorically observed that it is well-settled that registration would be necessary if the terms of the family arrangement are reduced into writing and the terms and recitals are made 'under the document' as opposed to the same being a mere memorandum for recording a previous arrangement which had already taken place between the parties.
- 44.** The difficulty arises, since in the latter part of Paragraph No.38 of *Kale (supra)*, the Supreme Court observed that assuming, however, that the document was compulsorily registrable, the courts have generally held that a family arrangement is binding on the parties to it and would operate as an estoppel by preventing the parties to resile from the same after having taken advantage of it.
- 45.** Another principle of the doctrine of precedent, however, comes into play in such context. A subsequent judgment of the same court would be *per incuriam* if it does not consider the effect of a previous judgment. However, if the subsequent judgment takes note of and explains, elucidates or elaborates the previous judgment, it is the latter which would be operative as a binding precedent.

- 46.** In the present case, thus, the judgments rendered by the Supreme Court in *K. Arumuga Velaiah (supra)* and *Korukonda Chalapathi Rao (supra)* would be operative as the binding precedent, since both of those judgments considered the ratio laid down in *Kale (supra)*.
- 47.** Even from another perspective, the *obiter dictum* of the Supreme Court in *Kale (supra)*, which otherwise carries considerable weight and is also binding on High Courts, to the effect that a family arrangement is binding on the parties on the principle of estoppel even if otherwise compulsorily registrable, has to be read in the light of Paragraph No.9 of the said judgment itself. While adumbrating on the legal effect of family arrangements, the Supreme Court held in Paragraph No.9 of *Kale (supra)* that a family arrangement would not be disturbed on “technical or trivial” grounds. Again, the Supreme Court uses the expressions “legal lacuna” and “formal defect” which, in the view of the Supreme Court, would not deter the court from pressing into service the rule of estoppel.
- 48.** Hence, we are to consider whether the bar under Section 14 of the WBLR Act and Section 17, read with Section 49, of the Registration Act, amount only to mere legal lacunae or formal defects or hit at the root of the devolution of title itself.
- 49.** In both *K. Arumuga Velaiah (supra)* and *Korukonda Chalapathi Rao (supra)*, as well as in *Kale (supra)*, the Supreme Court was considering a situation where a document which is compulsorily registrable can be looked into as evidence in the absence of registration, in the context of

a family arrangement. However, the bar under Section 14 of the WBLR Act stands on a higher footing than Section 17 of the Registration Act.

- 50.** Whereas Section 17, read with Section 49, of the Registration Act debars a court or a judicial authority from relying on or taking on evidence a compulsory registrable document if it is not registered, Section 14 hits at the transfer/creation of title itself.
- 51.** There is a clear distinction between a document being not admissible in evidence due to non-registration, in which case it would be otherwise admissible in evidence for collateral purposes, and a document not validly creating any title at all.
- 52.** Section 14 of the WBLR Act does not deal with the mere non-admissibility in evidence of an unregistered document, which is otherwise compulsorily registrable, but prevents any title from passing by virtue of a partition deed at all if it is unregistered.
- 53.** Section 14(1) provides that partition of a plot of land among co-sharers of a *raiyat* owning it shall be made either by a registered instrument or a decree or order of a court. Since it is nobody's case that there was a decree or order of court in the present *lis*, we confine ourselves to the registration part.
- 54.** Again, sub-section (6) of Section 14 of the WBLR Act introduces a *non obstante* clause which provides that 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.

- 55.** Section 3 of the WBLR Act also contains a *non obstante* clause which lends overriding effect to the said Act notwithstanding anything inconsistent therewith, not only in any other law in force but also custom, usage, contract or even a decree or order or decision or award of a court.
- 56.** Similarly, sub-section(6) of Section 14 provides that the said bar would be applicable notwithstanding anything contained not only in any other law, custom or contract, but also in any other *judgment* or award of *any court*. It is noteworthy that sub-section (6) of Section 14 of the WBLR Act is couched in negative language and provides teeth to sub-section (1) of Section 14. Whereas sub-section (1) of Section 14 provides that a partition shall be effected only by a registered instrument or of a decree of a court, sub-section (6) thereof provides that no such partition shall have “any force” unless it is registered. The *non obstante* clause gives overriding effect to the Act even over judgments of any court, by necessary implication including the Supreme Court.
- 57.** It would be useful to note here that the WBLR Act has been enacted by the State of West Bengal and prevails within the State of West Bengal over any other law or judgment. The WBLR Act relates to land etc. which is covered by item 18 of List-II (State list) of the Seventh Schedule of the Constitution of India and, thus, the State has the unbridled authority to enact law on the subject. Hence, the *non obstante* clause introduced in Section 3 and Section 14(6) of the WBLR Act is legally and constitutionally valid and legitimately confers

overriding effect to the Act even over previous judgments of the Supreme Court. Considered from such perspective as well, within the State of West Bengal, irrespective of the judgments of the Supreme Court to the effect that family arrangements may be oral and need not be registered, a partition, to be effected in the State and to have any force, has to be compulsorily brought about by way of a registered instrument in writing or a decree or order of court.

- 58.** Non-registration does not merely debar, as under the Registration Act, the document from being tendered in evidence to directly prove a fact (leaving it open for such document to be tendered as collateral evidence), but provides that no partition can be effected at all and/or can have any force unless the partition deed is registered. Thus, as opposed to being confined to mere evidentiary value of the unregistered partition deed, Section 14 prevents the very act of partition and/or conferment or creation of title by such partition within the State of West Bengal in the event the same is not effected through a registered instrument or a court decree.
- 59.** Accordingly, it cannot but be held that the ratio or *obiter dictum* of *Kale (supra)*, to the effect that non-registration does not vitiate a family arrangement at least between the parties who took advantage of the same, is overridden by the effect of Section 14 of the WBLR Act.
- 60.** As held in *Md. Nazrul Islam (supra)* by a co-ordinate Bench judgment of this Court, the 2002 amendment to Section 14 of the WBLR Act was given retrospective effect since August 7, 1969. All the relevant

documents in the present case, starting from 1981 and thereafter on 1996, were executed subsequent to such amendment having come into force.

- 61.** Again, the Supreme Court, in *Kartick Chandra Mandal (supra)*, categorically observed that after the introduction of the said provision, the partition of a holding can be effective only by a registered instrument or by a decree or order of a court in the State of West Bengal and there is no dispute as far as this aspect is concerned. Whereas the said decision is specifically on the issue of applicability of Section 14 (as amended) of the WBLR Act, the said provision did not come up for consideration, argued or decided on in the earlier judgments of *Kale (supra)* etc.
- 62.** That apart, in view of the nature of Section 14, which hits at the very root of the transaction as discussed above, non-registration does not remain a mere “legal lacuna” or a “formal defect” which can be brushed aside by the court on the principle of estoppel but attains the character of a substantive bar in creation of rights.
- 63.** It is well-settled that there cannot be any estoppel against the law. In *Kale (supra)*, the Supreme Court distinguished such proposition on the ground that the family arrangement therein was oral whereas in the present case, the deeds of 1996 and 1981, relied on by the defendants, were reduced into writing and comprised of present demise of title at those junctures.

- 64.** Also, the said documents are sought to be relied on as direct proof of transfer of title by way of partition between the parties and not as collateral evidence for the partition effected by those.
- 65.** Unless the 1996 deed is construed to comprise of a valid partition, the 2015 document which is challenged in the present suit cannot have any binding legal effect, since, if the 1996 document did not have any force as a partition deed, the subsequent deed of 2015, entered into only in respect of a part of the joint property and between some of the co-owners, is palpably bad in law and invalid as such.
- 66.** The judgment of *Tulasidhara (supra)* is not germane in the present context, since the Supreme Court, in paragraph 9.5 thereof, reiterated that a written document of family settlement/family arrangement can be used even without registration as “corroborative evidence” to explain the arrangement made thereunder and the conduct of the parties.
- 67.** Even if we were to construe the 1996 document in the present case as corroborative evidence to show that parties had intended to effect a family arrangement between themselves, in the teeth of Section 14 of the WBLR Act, the said deed itself, which contained present demise as per its own language, could not comprise of a valid partition.
- 68.** We could have understood if the said terms were finally reduced into writing on the basis of previous understanding and subsequently registered between all the co-owners and pertained to all the joint properties, in which case a valid partition would have been effected.

- 69.** However, the document dated March 9, 2015 in the case at hand was executed between the defendants only, leaving out the plaintiff/co-owner and entered into in respect of only a portion of the entire joint property, comprised of the subject matters of the suit and the counter claim.
- 70.** The judgment of the learned Single Judge of this Court in *Dipsikha Chakraborty (supra)*, apart from being not binding on the present Division Bench as a precedent, merely held that in the facts of the case, the principle of estoppel was applicable since the parties had entered into five agreements giving out their intention to transfer the property and thus formed a contractual obligation, coupled with estoppel. The said documents were pitted against a contractual restriction enforceable by the government against the plaintiffs and held to have overriding effect over the latter. Thus, in the said case, it was contract, along with estoppel, as against contract, which is entirely distinguishable from the present case which is one of estoppel versus statute.
- 71.** Thus, even if the appellant has acted in terms of the 1996 deed, thereby dealing with some parts of the property, the joint character of the entire property comprised of the subject-matter of the suit as well as counter claim was never lost in accordance with law.
- 72.** Hence, the plaintiff/appellant is entitled to a declaration that the partition deed bearing no.834 dated March 9, 2015 is an invalid document whereby no title passed between the parties and does not

bind the plaintiff/appellant in any manner. As a logical corollary, the 2/5th share of the plaintiff is also required to be declared, along with a permanent injunction being granted restraining the defendants from disposing the said properties in any manner and to make any type of construction thereon.

- 73.** Insofar as the counter claim is concerned, the same is patently barred by law due to non-joinder of all joint properties, particularly those comprised of the suit property pertaining to RS Plot Nos.1813, 1814 and 1816. Hence, the counter claim was rightly turned down by the learned Trial Judge.
- 74.** In such view of the matter, F.A.T. No. 262 of 2019 is allowed on contest, thereby setting aside the judgment and decree dated March 15, 2019, passed by the learned Civil Judge (Senior Division) at Purulia, District-Purulia in Title Suit Number 52 of 2015 to the extent that the plaintiff/appellant's suit was dismissed.
- 75.** It is hereby declared that the registered partition deed bearing no.834 dated March 9, 2015 executed between the defendants is an invalid document whereby no partition was effected between the defendants/respondents and that the said document does not bind the plaintiff/appellant in any manner whatsoever.
- 76.** It is further declared that the plaintiff/appellant has 2/5th share in the suit property which was the subject-matter of the said deed dated March 9, 2015.

- 77.** The respondents are hereby restrained by a decree of permanent injunction from disposing of the suit property in any manner in favour of third parties and/or from making any type of construction thereon.
- 78.** The counter claim filed by the defendant/respondent nos.1 to 3 stands hereby dismissed and the said portion of the impugned judgment and decree is sustained.
- 79.** There will be no order as to costs.
- 80.** A formal decree be drawn up accordingly.
- 81.** In view of the above judgment, CAN 2 of 2024, which seeks to raise a new issue in the garb of Order XLI Rule 27 of the Code of Civil Procedure, becomes redundant and is accordingly dismissed.

(Sabyasachi Bhattacharyya, J.)

I agree

(Subhendu Samanta, J.)