

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Before:

**The Hon'ble Justice Soumen Sen
and
The Hon'ble Justice Apurba Sinha Ray**

FAT No. 310 of 2012

Sri Dilip Saha & Anr.

Vs.

Smt. Pratima Biswas & Ors.

For the Appellants : Mr. Partha Sarathi Bhattacharyya, Sr. Adv.,
Mr. Raju Bhattacharyya, Adv.

For the Respondents : Mr. Ramkrishna Bhattacharyya, Adv.
Mr. Kaushik Choudhury, Adv.

CAV On : 06.08.2025

Judgment On : 18.08.2025

Apurba Sinha Ray, J. :-

1. Being aggrieved by and dissatisfied with the judgment and decree dated 31.03.2012 passed by the Learned Civil Judge, Senior Division, Raiganj, Uttar Dinajpur in Partition Suit No. 20 of 2008 the appellants have preferred the present appeal on the grounds, inter alia, the share of the respective parties in the suit for partition had not been taken into

consideration and had not been included in the schedule of the property. Further, the property comprised in Khatian No. 1233, R.S Plot No. 2524 of Mouza – Mohanbati was not brought into common hotchpots. The declaration of the plaintiff's share in the property to the extent of 7/12th is erroneous and cannot be sustained. Other co-sharers who are entitled to share in the property by inheritance had not been made party in the suit for partition. Therefore, the suit is not maintainable for non-impleadment of necessary parties. Moreover, some of the properties of the original owner Nikhil Chandra Sarkar had not been taken into consideration in calculating the share of the plaintiff in connection with the aforesaid partition suit, and, therefore, inevitably there will be an alteration of share of the plaintiff but the Learned Trial Court did not take into consideration such matters. The appellants are bona fide purchasers of the property from Pratima Sarkar, the erstwhile defendant no. 3 and they cannot be penalized by the decree of partition and the rights of appellants as purchasers should not be altered since the appellants purchased the property in good faith by a registered sale deed and since then they have been possessing the said properties since their purchase. All these aspects were not properly considered by the Learned Trial Judge. After the death of Benu Sarkar, Pratima Sarkar being the wife of Benu Sarkar inherited the said property and thereafter she sold the entire property to Dilip Saha but this aspect was also not taking into consideration.

2. The plaintiff/respondent has submitted the judgment under appeal is well reasoned and does not call for any interference. It is also submitted that a subsequent purchaser has no right, authority and jurisdiction to raise any defence beyond his/her deed. However, in this case, the deed allegedly executed by Pratima Sarkar is not acceptable since the said Pratima Sarkar sold the property showing her as the only owner of the suit property after suppressing the fact that there are other co-sharers of the said property. There is no dispute that the plaintiff is entitled to get 7/12th share of the suit property during the lifetime of Pratima Sarkar and after her death the plaintiff is entitled for the entire share of the suit property since Pratima Sarkar and her husband died issueless and excepting the plaintiff there is no other legal heir of the said Pratima Sarkar being the defendant no. 3. Therefore, the said deed of transfer so executed by the defendant no. 3 in favour of the defendant nos. 1 and 2 is an invalid deed. As the appellant nos. 1 and 2 are subsequent purchasers, they cannot claim that other co-sharers of other properties of the original owner Nikhil Chandra Sarkar should be arrayed in this suit for partition. According to the learned counsel of the plaintiffs/respondents as the appellant nos. 1 and 2 are subsequent purchasers and are not their relatives in any way, there is no scope for agitating the said issue on the part of the appellant nos. 1 and 2. According to the learned counsel of the respondent no. 1 the appellants have failed to make out any valid case in the instant appeal and as such the instant appeal is liable to be dismissed.

3. The background of the present appeal may be encapsulated as hereunder:-

One Pratima Biswas being the plaintiff and respondent no. 1 herein has brought the partition suit being no. P.S. Suit No. 28 of 2008 before the Learned Court of Civil Judge, Senior Division at Raiganj, Uttar Dinajpur praying for a preliminary decree declaring 7/12th share in her favour and also for a declaration to the effect that the LR ROR in the name of Pratima Sarkar is illegal, void and obtained fraudulently along with other necessary reliefs. The brief plaint case may be summarized as hereunder:-

“That the suit property previously belonged to Nikhil Ch. Sarkar who purchased the same by way of Regd. Deed of sale Deed Vide No. 5154 dated 04.04.1960. While he was owning and possessing the same died leaving behind him i) Plaintiff daughter ii) Benu Sarkar son and iii) Usha Rani Sarkar wife as his only legal heirs and successors who inherited the suit property keeping the entire property in their joint possession and they were possessing the same according to their respective 1/3rd share each. Subsequently Benu Sarkar in his turn died leaving behind him Usha Rani Sarkar and defendant No.3 as his legal heirs and the 1/3rd share Benu Sarkar devolved upon his mother Usha Rani Sarkar and defendant No.3 1/6th each. In this way Usha Rani Sarkar got 1/2 of the share, defendant No.3 got 1/6th share in the suit property. Thereafter Usha Rani Sarkar died

and her 1/2 of the share in the suit property devolved upon the plaintiff and defendant No.3 1/4th each. In this way plaintiff got 7/12th share and defendant No.3 got 5 / 12th share in the suit property and they were possessing the same keeping entire property in their joint possession according to their respective share as stated herein above.

2) That the defendant No.3 in collusion with defendant nos. 1 & 2 without informing the plaintiff executed and registered a deed of sale vide no. 2193 for 2008 in favour of Defendant No. 1 & 2 claiming to be herself as only legal heirs and allegedly described in the schedule of the said deed purporting to be transferred entire suit property. That the said deed of sale is not acted upon so far as the share of plaintiff in the suit property is concerned as such Defendant No. 1 & 2 cannot claim in excess of 5/12th share of defendant No.3. After the notice and knowledge of the alleged transfer the plaintiff enquired into the office of A.D.S.R., Raiganj, Uttar Dinajpur and got the certified copy of the said deed and after going through the contents of the said deed the plaintiff came to know that defendant No.3 prepared the said deed on the false premises and the plaintiff also came to know that the defendant No.3 got her name recorded in respect of the entire suit property.”

4. It is also alleged that there was no partition of the properties by metes and bounds and the plaintiff and the defendants are possessing the same in ejmali. As the defendants refused to partition the property, the relevant suit for partition was brought by the plaintiff/respondent no. 1 herein. The defendant nos. 1 and 2, the subsequent purchasers, being the appellants herein, have contested the suit by filing a written statement denying all the relevant allegations leveled against them. It is also the case of the defendant/appellants that Nikhil Chandra Sarkar was the original owner and his brother Akhil Chandra Sarkar have purchased the property comprised in Mouza- Mohanbati, Thana – Raiganj, C.S. 352 which has been prepared as R.S. 1233 Khatian C.S. 1339 RS 2524. As there was some family dispute the said Nikhil Chandra Sarkar gifted the suit property orally and made suitable accommodation for his son Benu Sarkar to live in the said property with his wife separately. There was no deed in support of such a gift. Thereafter, Benu Sarkar constructed a building on the suit property after obtaining a sanction plan from Raiganj municipality and started living with his wife Pratima Sarkar who was arrayed as defendant no. 3 in the relevant suit. After the demise of Benu Sarkar, his wife, the defendant no. 3 was residing in the suit property. After the death of Akhil Chandra Sarkar, and his legal heirs sold away some portion of the joint property in Mohanbati R.S. 2524 to Benu Sarkar by virtue of a registered deed being no. 1793 of the year 1983. After the death of Benu Sarkar the plaintiff/respondent no. 1 had tried to evict the defendant no. 3 Pratima Sarkar from the suit property but being failed to do so they made an oral

arrangement with the said defendant no. 3 and by virtue of such mutual settlement the defendant no. 3 allowed to have the suit property in its entirety and the plaintiff/respondent no. 1 was allowed to have the property in R.S. Dag Plot No. 2524. The present LR record has recorded such arrangements by way of mutual settlement. The defendant no. 3 being an aged and ailing person proposed to sell the said property and informed the same to the plaintiff/respondent no. 1 but as per advice of the son of the plaintiff the plaintiff asked the defendant no. 3 to exchange her property with the property in R.S. Dag No. 2524. After reposing faith upon the plaintiff/respondent no. 1 the appellants purchased the suit property. The plaintiff never obtained physical possession of the suit property and in fact the present appellants being defendant nos. 1 and 2 purchased the property of defendant no. 3. It is also alleged by the appellants in his written statement that the plaintiff and her sons misguided the defendant no. 3 and procured the deed in connection with the property comprised in R.S. Plot No. 2526.

5. By a judgment dated 31.03.2012 the Learned Civil Judge, Senior Division, Raiganj, Uttar Dinajpur decreed the said partition suit in preliminary form and relevant decree which was drawn on 10.04.2012 which is quoted herein below:-

“It is ordered and decreed that the instant suit be and the same is decreed in preliminary form on contest against defendant no.1 & 2, ex parte against the rest but without cost. The right, title & interest of the plaintiff in the suit

property in respect of 7/12th share is hereby declared. The parties to the suit are hereby directed to make partition of the suit property by metes and bounds within 60 days from this day, failing which either of the parties are at liberty to pray for final decree by way of appointment of a Pleader-Commissioner and in the event of such appointment, Ld. Commissioner shall abide by the principles of partition, mainly, the balance of convenience and inconvenience of the parties to the suit, compactness of allotments as far as possible and practicable.

Given under my hand and the seal of this Court, this 31st day of March, 2012.”

6. We have considered the rival submission of the parties and have also taken into consideration the available materials on record. Learned counsel Mr. Bhattacharya, appearing for the appellants, has submitted that his grounds of appeal in paras ii, iii and vi are crux of the appeal and they should be considered by this appellate court before deciding this appeal.

7. The said grounds as submitted by the appellants are quoted herein below:-

“ii) For that the shares of respective parties in the suit for partition has been altered inasmuch as the property under Khatian No.1233 and R.S. Plot No.2524 of Mouza Mohanbati had not been taken into consideration and had not been included in the schedule of property for which

the suit for partition was filed in P.S. No.20 of 2008.

iii) For that the Learned Court below did not take into consideration the argument of the plaintiff that the property pertaining to Khatian No. 1233 and R.S. Plot No. 2524 of Mouza - Mohanbati should come in common hotchpot since there is no dispute between Smt. Pratima Sarkar and Smt. Pratima Biswas over the said property and Smt. Pratima Sarkar did not take such defence by way of contest is wholly unsustainable.

vi) For that the defence taken in the Written Statement was not taken into consideration by the learned Court below at the time of delivering judgment.”

8. From the grounds mentioned above it appears that the appellants have taken the plea that as the other properties under Mouza - Mohanbati had not been included in the schedule of the suit property to the plaint of Partition Suit No. 20 of 2008, the shares of the plaintiff cannot be determined properly and this objection to the plaint case for partition was not duly considered by the Learned Trial Court.

9. From the schedule of the suit property it appears that the partition was sought for in respect of the property which is comprised in Mouza -

Mohanbati, J.L. No. 151, Khatian No. R.S. – 7 corresponding to L.R 2002, Plot No. R.S. 502, L.R – 3326, area of land 0.0417 acre. It appears from the plaint case that the plaintiff/respondent no. 1 claimed that the above suit property was purchased by Nikhil Chandra Sarkar and after his demise the same was devolved upon herself, her mother since deceased and also upon the husband of the defendant no. 3 Pratima Sarkar. According to the plaint case, as the said property was the exclusive property of Nikhil Chandra Sarkar, there is no question of bringing other properties to the schedule to the plaint which Nikhil Chandra Sarkar co-owned with his other co-sharers. On the other hand, the defence case is that Nikhil Chandra Sarkar had other properties with co-sharers and they should be brought to the common hotchpots, otherwise there will be an error in determining the share of the plaintiffs and the appellants. It is specific defence case, as per para 6 of the written statement, that as the uncle of the plaintiff Late Akhil Chandra Sarkar was a co-sharer with Nikhil Sarkar in connection with property comprised in Mohanbati- Mouza R.S. Khatian No. 1233, Plot No. 2524, the legal heirs of Late Akhil Chandra Sarkar should be made parties to the relevant partition suit. In fact, we do not find in the defence case that there is any specific denial that Nikhil Chandra Sarkar was not the absolute owner in connection of the suit property comprising in mouza – Mohanbati, J.L. No. 151, Khatian No. – 7 which is corresponding to L.R-2002, Plot No. R.S. – 502, LR – 3326 area of land 0.0417 acre. It is found from the materials on record that though the appellants are bonafide purchasers for value, they are not the legal heirs of Nikhil Chandra Sarkar. The erstwhile

defendant no. 3 transferred the property claiming that she was the absolute owner of the suit property which appears to be not correct. The said defendant no. 3 can transfer only her share to the appellants and not in excess of that. It is a settled principle of law that a person can transfer property according to his share and the transferee can get such amount of share which his transferor is entitled under law to transfer. As the defendant nos. 1 & 2 being appellants have failed to make out any case that the suit property was owned by Nikhil Chandra Sarkar and his brothers jointly by bringing documentary evidence and also making out a case in the written statement to that effect, we find that the Learned Trial Judge has rightly considered the suit property as the absolute property of Nikhil Chandra Sarkar who left for his heavenly abode after leaving behind him the legal heirs namely wife Usharani Sarkar, son Benu Sarkar and daughter Pratima Biswas and accordingly the suit property devolves upon $1/3^{\text{rd}}$ share each to the wife Usharani Sarkar, son Benu Sarkar and daughter Pratima Biswas. After the death of Benu Sarkar his $1/3^{\text{rd}}$ share of his estate devolved upon his wife Pratima Sarkar and mother Usharani Sarkar to the extent of $1/6^{\text{th}}$ share each. Therefore, after the death of Benu Sarkar, Usharani Sarkar got $1/2$ share of the suit property and Pratima Biswas got $1/3^{\text{rd}}$ share of the suit property and Pratima Sarkar being defendant no. 3 is entitled to $1/6^{\text{th}}$ share of the property. After the death of Usharani Sarkar her share of the property was devolved upon Pratima Biswas and Pratima Sarkar to the extent of $1/4^{\text{th}}$ share each. Now by virtue of such devolution Pratima Biswas holds $1/3^{\text{rd}} + 1/4^{\text{th}} = 7/12^{\text{th}}$ whereas Pratima Sarkar after the death of her

mother-in-law will be entitled to $1/6^{\text{th}} + 1/4^{\text{th}}$ share which comes to the extent of $5/12^{\text{th}}$ share of the suit property. Hence, by holding that the suit property was the absolute property of Nikhil Sarkar, the respondent no. 1 /plaintiff is entitled to $7/12^{\text{th}}$ share of the suit property whereas the appellants being bonafide purchasers from the defendant no. 3 is entitled to $5/12^{\text{th}}$ share jointly. As the appellants have failed to bring on record that the suit property was owned by Nikhil Chandra Sarkar along his brother, we do not think that the ground for not bringing other properties of Nikhil Sarkar and other co-sharers to the schedule to the plaint, is a misplaced one and cannot be agitated herein since there are sufficient materials on record that the suit property belongs to Nikhil Sarkar originally exclusively. Moreover, the appellants have also failed to prove their specific cases of alleged oral gift in favour of Benu Sarkar by his father Nikhil Sarkar, the alleged mutual arrangement on the basis of alleged exchange of properties in other dags by cogent evidence.

10. In fine, we do not find any error in the impugned judgment and accordingly we affirm the judgment and decree dated 31.03.2012 passed by the Learned Civil Judge, Senior Division, Raiganj, Uttar Dinajpur in connection with the Partition Suit No. 20 of 2008 excepting with the observation that appellants are also entitled to $5/12^{\text{th}}$ share of the suit property.

11. The instant appeal being FAT No. 310 of 2012 is dismissed on contest. No order as to costs. The trial court record be sent to the Learned Trial Court immediately along with a copy of the judgment.

12. Accordingly, FAT 310 of 2012 is disposed of. Interim order if any, stands vacated.

13. Urgent photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(SOUMEN SEN, J.)

(APURBA SINHA RAY, J.)