IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Sugato Majumdar

SA/1550/1973

GOLAP JAN BIBI AND ORS

VS

HACHENA BIBI AND ORS

For the Appellants : Mr. R. Mahato, Adv.

Hearing concluded on : 17.11.2026

Judgment on : 26.11.2026

Sugato Majumdar, J. :

The instant Second Appeal was filed against the Judgment and Decree dated 26/08/1970 and 03/09/1971, passed by the Sub-ordinate Judge, 2nd Court Hooghly, in Title Appeal No. 319 of 1968, reversing the Judgment and Decree dated 01/06/1968 and 10/06/1968 respectively, passed by the Munsif, 1st Court at Hooghly in Title Suit No. 77 of 1965.

The nutshell of the plaint case may be summarized as follows:-

a) The Plaintiff's father was one Rajab Ali Mullick. The property described in Schedule – 'Ka' belonged to the said Rajab Ali Mullick. The property described in Schedule –'Ga' belonged to the said Rajab Ali Mullick and the predecessor of the pro-forma Defendant No. 4. The property described in Schedule –'Kha' was taken on

settlement by the Appellant/Plaintiff along with his two brothers Jiad Ali Mullick and Abdul Latiff Mullick.

b) The said Rajab Ali married thrice. His first wife was Esran Bibi. Abdul Latiff Mullick was the only surviving son, born out of the wedlock. After death of Esran Bibi, the said Rajab Ali married Majiran Bibi. One daughter was born who predeceased her parents. Rajab Ali divorced the second wife and married Jinnat Bibi for the third time. The Plaintiff was born out of this wedlock. Apart from him, another son Jiad and one daughter Jahura were born out of this wedlock. Rajab Ali expired leaving behind him Abdul Latiff (son from his first wife), the Plaintiff, Jiad, another son out of the third wedlock, Jahura and the widow Jinnat Bibi.

c) Subsequently, Jahura died leaving behind her husband Md. Latiff Mullick, daughter Nasira, two full brothers being Kalu and Jiad, mother Jinnat and half-brother Abdul Latiff. Then Jiad also expired leaving behind his widow and a daughter.

d) It was the plaint case that the Plaintiff got a portion of Jahura's share, share of a portion of Jiad and finally a portion of share of his mother, all by way of inheritance. Then Jahura's husband gifted orally his share of 'Ka' and 'Ga' Schedule properties.

e) The Plaintiff's case was that he had 9 annas 6 gondas 3 karas 2 kranti and 10 tils share in 'Ka' schedule property; 7 annas 6 gondas 2 karas 2 kranti share in 'Kha' property; 4 annas 10 gondas 2 karas 2 kranti share in 'Ga' Schedule property.

f) The case of the Plaintiff, further, was that there was erroneous entry in record of rights in respect of the shares of the Plaintiff in respect of the Scheduled properties.

g) The Defendants had been threatening the plaintiff to dispossess him. Hence the Plaintiff filed the suit praying for decree of declaration of his shares in the scheduled properties; declaration that entries in the record of rights were erroneous; permanent injunction against the Defendant No. 1 and 2 not to interfere with the possession of the Plaintiff along with other prayers.

The Defendant No. 1 and 2 contested the suit by filing written statement. The plaint was amended once, when the Plaintiff introduced the plea of the second marriage of the said Rajab Ali.

In the Written Statement, genealogy was not disputed but it was denied that the said Rajab Ali married thrice. Rajab married once only and his wife was Jinnat Bibi. It was denied that the husband of Nasira made any oral gift to the Plaintiff. Plea was also taken that the suit properties had been previously partitioned and entries in the record of rights had been made on the basis of partition. Entries in the record of rights were correct.

On the basis of rival pleadings, following issues were framed:

1. *Is the suit maintainable in the present form?*

2. *Is the suit barred by limitation and adverse possession?*

3. *Are the C.S. and R.S. records erroneous in respect of Plaintiff's share of the said land?*

4. *Has the Plaintiff 9 anna, 8 gonda, 3 karas and 2 kranti in respect of kha schedule properties and 5 anna. 19 Gds. and 1 kranti in respect of ga schedule properties? Has he in possession in such lands?*

5. *Is the Plaintiff entitled to the declaration and injunction as prayed for?*

6. *To what relief, if any, is the Plaintiff entitled?*

The Trial Court allowed and decreed the suit.

On being aggrieved and dissatisfied, the appeal as filed which was numbered as Title Appeal No. 19 of 1968. The First Appellate Court being the Sub-ordinate Judge, 2nd Court, Hooghly, allowed the appeal and set aside the decree passed by the Trial Court in terms of Judgment dated 01/06/1968.

On being aggrieved and dissatisfied, the instant appeal was filed. The following substantial questions of law were framed for hearing of the appeal:

I. Whether the learned Judge in the First Appellate Court substantially erred in law in reversing the decree decreeing the suit by the learned Trial Court, by holding that earlier partition having been done, such partition cannot be reopened, when there was no partition according to Section 14 of the Land Reforms Act, 1955 and the relevant records of right cannot be treated as proof of earlier partition.

II. Whether the learned Judge in the First Appellate Court substantially erred in law in reversing the decree decreeing the suit by the learned Trial Court, thereby dismissing the suit for declaration of title, despite admission of defendants that the plaintiff is brother of the defendants.

III. Whether the learned Judge in the First Appellate Court substantially erred in law in reversing the decree decreeing the suit by the learned Trial Court, by holding that the plaintiff has failed to prove that he has larger share in the suit property, without considering the oral gift by the husband of Jahura, daughter of Rajab Ali Mallick and Jinnat Bibi, under Muslim law.

Mr. Mahato, the Learned Counsel for the Appellants submitted that the First Appellate Court committed serious error in concluding that once the suit property had been subjected to partition there cannot be any question of reopening the same. Referring to a Division Bench Judgment of this Court in **Md. Nazrul Islam Vs. Uday Chakraborty [2017 SCC OnLine Cal 1603],** Mr. Mahato submitted that partition should be either by decree of the Court or by a registered instrument under Section 14 of the West Bengal Land Reforms Act, 1955, as amended in the year 2002 giving retrospective effect from 7th August, 1969. In this case there was no evidence of partition either by a registered deed or by any order of a Court. The First Appellate Court failed to appreciate or understand that demanding setting aside of the judgment and decree of the First Appellate Court.

Certain observations were made by the First Appellate Court. Firstly, it was noted by the First Appellate Court that the Plaintiff pleaded that Schedule- 'Ga' property was jointly owned by the father of the Plaintiff Rajab Ali Mullick along with the father of the pro-forma Defendant no.4. But the plaint was silent on the extent of share of Rajab Ali Mullick in Schedule- 'Ga' property. In evidence the Plaintiffs stated, contrary to the pleading, that is father had 16 annas share in Schedule-'Ga' property. It was concluded by the First Appellate Court that the Plaintiff failed to establish his share in Schedule-'Ga' property.

Secondly, the First Appellate Court observed certain inconsistencies in the statement of PW-4. Inconsistencies were also noted by the Trial Court, according to the First Appellate Court, but were ignored. According to the First Appellate Court, because of the inconsistencies Plaintiff had not been able to prove that he had larger share by way of inheritance and succession as the full brother of Jiad or as a son of Jinnat or as a brother of Jahura or as a maternal uncle of Jahura.

Thirdly, the First Appellate Court observed that it was in the pleading of the Plaintiff that by virtue of oral Hiba, husband of Jahura donated 1 anna 6 gondas 2 karas 2 kranti share in respect of Schedule-'Ka' property and 4 annas 10 gondas 1 karas 1 kranti share in respect of Schedule-'Ga' property. The Trial Court also dismissed the case of oral Hiba. In that situation the Trial Court should not decree the suit in full as observed by the First Appellate Court taking into account the land gifted under the oral Hiba.

Fourthly, it was observed by the First Appellate Court that the Plaintiff pleaded that the property was in joint possession but the pleadings are contradictory on the point of possession. The First Appellate Court was of view that strangely enough the Plaintiff did not seek for partition by metes and bounds though it was pleaded by him that his possessions have been threatened. All the aforesaid grounds weighed against the Plaintiff for which the First Appellate Court reversed the decree of the Trial Court.

Both the courts had certain common findings. Both the courts rejected the plea of oral Hiba but the Trial Court continued to allow the suit in full, undermining its own disbelieve of oral Hiba. The Trial Court committed error here and the Appellate Court was corrected that error.

The Plaintiff claimed that possession of the Schedule-'Ga' property had been owned by his father along with another but the extent of share is not clear and the Plaintiff failed to establish the extent of share in respect of Schedule-'Ga' property. In absence of these particulars decree for declaration in respect of Schedule-'Ga' property in favour of the Plaintiff is defective.

Order VII Rule 3 of the Code of Civil Procedure, 1908 states that where the subject matter of the suit is immovable property. The plaint shall contain a description of the property sufficient to identify it and in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaint shall specify such boundaries and numbers. Calcutta High Court Amendment states that area should also be mentioned. These particulars are not in the plaint. The First Appellate Court rightly decided that the Plaintiff failed to establish his share in Schedule-'Ga' property.

It was also in the observation of the First Appellate Court that partition has already been affected between the parties and there is an entry in respect of record of rights. There is no justification for reopening the partition. In this case, as observed by the First Appellate Court correctly the Plaintiff did not sue for partition though sought for a declaratory decree. In one sense prayer for declaration of title is not followed by prayer for partition by metes and bounds which should be an ideal sequel. Secondly, it is a question of fact which has been decided by the Trial Court as well as the First Appellate Court. The Trial Court ignored the admission of the Plaintiff as PW-3 that the properties have been divided among the brothers amicably and they became separate. The Trial Court failed to consider that once there is amicably partition without taking into consideration of the same decree for declaration cannot be passed.

The Learned Counsel for the Appellant relied on a Division Bench judgment of this High Court in **Md. Nazrul Islam Vs. Uday Chakraborty [2017 SCC OnLine Cal 1603]** where it was observed by the Division Bench that Section 14 of the West Bengal Land Reform Act, 1955 was amended in the year 2002. By virtue of such amendment, partition can only be effected either by a registered deed of partition or by a decree of Civil Court. No other mechanism for partition is recognized under Section 14 of the West Bengal Land Reforms Act, 1955 which got its retrospective effective from 7th August, 1969. The suit was filed in the year 1967 and the partition took place prior to that or at least definitely prior to passing of the judgment by the Trial Court on 01/06/1968. Therefore, absence of registered deed or decree of a Court is not a factor to be taken into consideration and that did not negate the partition as in evidence.

On perusal of the decision, this Court is of opinion that the First Appellate Court meticulously appreciated evidence and analyzed the facts and was correct in reversing the judgment and decree passed by the Trial Court. Therefore, this Court is of opinion that the decree of the First Appellate Court demands no interference.

In nutshell, for reasons as aforesaid, the instant appeal fails.

The judgment and decree passed by the First Appellate Court in Title Appeal No. 399 of 1968 stands upheld.

The instant appeal is disposed of along with all pending applications, if any.

TCR be returned.

Decree be drawn up.

(Sugato Majumdar, J.)