

08.04.2026
Court No.13
Item Nos. 3-4
pk

FA 240 of 2010

Ekramuddin Ahmed @ Nasim and others
(Mumtaz Begum since deceased)
Vs.
Arfanessa Bibi and others

With

FA 241 of 2010

Ekramuddin Ahmed @ Nasim and others
(Mumtaz Begum since deceased)
Vs.
Arfanessa Bibi and others

Mr. Prithish Chandra

.... for the appellants.

Mr. Probal Mukherjee, Sr. Adv.
Sk. Yusuf Mannan,
Mr. Suhrid Sur

... for the respondents

1. The instant appeals have been filed by the appellants who are plaintiffs in T. S. No. 54 of 2008 and defendants in T. S. No. 55 of 2008. T. S. No. 54 is a suit filed by the appellants seeking partition of a property that originally belonged to one Jamiruddin. T.S. No. 55 of 2008 has been filed by the respondents seeking eviction of an occupant of room in premises no. 48, Dilkhusha Street, Kolkata – 700017.

2. The common ancestor of the parties is one Jamruddin who died leaving behind two sons, namely, Jahiruddin and Mafizuddin. It is claimed that Jahiruddin

died leaving behind his wife, Mehennegar Bibi and predeceased his brother, Mafizuddin. It is further claimed by the appellants that Mehennegar Bibi orally gifted two annas of her share of the property to Mafizuddin. Mafizuddin, therefore, according to the appellants became the sole owner of two properties, namely, 48 Dilkhusa Street, Calcutta - 700017 and Premises No. 50A, Dilkhusa Street, Calcutta - 700017. Mafizuddin is stated to have died leaving behind his wife, namely, Amina Bibi and two sons, namely, Aftabuddin and Mahiuddin and two daughters, namely, Aklima Khatoon and Halima Khatoon. The two sons are stated to have inherited $\frac{7}{24}$ share each and the daughters inherited $\frac{7}{48}$ share each in the property of Mafizuddin. Aklima Bibi died leaving her mother, Amina Bibi, her husband Azazul Rahaman and a son, Ansuruddin Ahmed. Amina Bibi is stated to have inherited $\frac{7}{34}$ share and Azazul inherited $\frac{7}{192}$ share and Ansuruddin inherited $\frac{35}{384}$ share. Aftabuddin died leaving behind Amina Bibi, brother of Halima Khatoon, Mainuddin and sister Halima Khatoon, who inherited $\frac{70}{432}$ and $\frac{35}{432}$ share in the suit property.

3. The successors of Amina Bibi, inherited respective shares transferred the property to other and their legal heirs and/or third parties. The defendants in T. S. No. 54 of 2008 contended that a registered partition deed dated

14.01.1983 was entered into by and between the appellants and the respondents. The said deed has been acted upon and enforced. There can be no further partition of an already partitioned property.

4. As a consequence whereof the said partition deed dated 14.01.1983, Premises No. 48 Dilkhusha Street fell in share of the appellants. A room in Premise No. 48A fell to the share of the respondents. Insofar as Premises No. 50A Dilkhusha Street is concerned major portions of the property fell in the share of the respondents. Some small portions fell into the share of the appellants.

5. The fulcrum of the argument of the appellants before the trial court was that Jahiruddin, son of the common ancestor died before the other son Mafizuddin. The Trial Judge found from the evidence on record that Mafizuddin died in the year 1907 and Jahiruddin died on 7th May, 1919. The entire claim of the appellants, therefore, of the alleged fraud in the registered partition deed dated 14.01.1983 falls flat on its face.

6. The trial judge found that based on the partition deed dated 14.01.1983 both the appellants and the respondents occupied their respective properties and effected mutation of their respective portions with the KMC.

7. Such mutation by the respondents was not challenged by the appellant. The respondents further obtained sanction plan and constructed a building at premises No.50A, Dilkhusha Street, Kolkata – 700 017. This was also not objected to. The arguments of the respondents was further strengthened by reference to a Deed of Release dated 18th March, 1964 signed by Amina Bibi, daughter of Mafisuddin, and also by son of the original recorded owner, Jamruddin.

8. Admittedly, PW-1, the plaintiff/appellant no. 1 who deposed on behalf of the appellant, had signed on the partition deed dated 14th January, 1983. Without entering into the other details of inheritance of the legal heirs of Jamiruddin, namely, Jahiruddin and Mafisuddin, the trial judge rightly found the T.S 54 not maintainable.

9. This Court finds that the Trial Judge has taken great pains to trace out the inheritance and title of the parties to the Registered Partition Deed dated 14th January, 1983. The argument of fraud, collusion and voidance in entering into the Partition Deed dated 14th January, 1983 was rightly rejected by the Trial Court.

10. Insofar as the arguments advanced by the appellants before the Trial Court, that the property of Jahiruddin was a Thika property under the Thika Tenancy Act, the Trial Judge found that PW-1 had filed a

petition before the Rent Controller on 3rd February, 1994 where he referred to Title Suit No. 550 of 1980 where the parties had specifically contended that the property was not a Thika property. The said Title Suit No. 550 of 1980 was decreed and execution of the decree was completed to the full satisfaction.

11. PW-1, Ekramuddin Ahmed was the plaintiff in Title Suit No. 550 of 1980 and aggressively objected to a defendant therein being Tobarak Hossain. Tobarak Hossain had claimed that the property was a Thika tenanted property and hence no eviction could be sought against him. This contention of the defendants was rejected. Based on the above and the decree in Title Suit No. 550 of 1980, the learned Trial Judge found that the contention of the appellants that the property in question is a Thika tenanted property was baseless.

12. The original Registered Partition Deed dated 14th January, 1983 having been upheld by the Trial Judge, Title Suit No. 54 of 2008 was rightly dismissed by the learned Trial Judge.

13. In so far as Title Suit No. 55 of 2008 is concerned, the claim of the appellants, who are the defendants in the said suit became rather academic.

14. The only issue therein was whether the plaintiffs therein being the respondents herein were entitled to evict the appellants, who were in occupation of a room in

premises No. 48, Dilkhusha Street, Kolkata – 700 017 belonging to the respondent. The Trial Judge found that the appellants were in permissive occupation and licensee in the said room. The licence having expired and the respondents having reasonable requirement of the room, the decree of eviction of the appellants from the said room at premises No.48, Dilkhusha Street, Kolkata – 700 017 therefore calls for no interference whatsoever.

15. In view of the discussions made hereinabove, the impugned judgment and decree dated 15th June, 2009 is upheld. F.A. 240 of 2010 and F.A. 241 of 2010 are dismissed.

16. The appellants shall surrender the vacant possession of the room in premises No. 48, Dilkhusha Street, Kolkata – 700 017 to the respondents within a period of one month from the date. In default whereof, the respondents shall be entitled to put the decree passed by the learned Trial Judge into execution. The respondents, in addition thereto, shall also be entitled to seek mesne profit for the illegal occupation by the appellants of the said room in premises No. 48, Dilkhusha Street, Kolkata – 700 017.

17. The aforesaid decree be drawn up as expeditiously as possible by this Court.

18. In view of dismissal of the appeals, the connected applications are also dismissed.

19. There will be no order as to costs.

20. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Rai Chattopadhyay, J.)