

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

SA/117/1993

**SRI KANAILAL DAS SINCE DECEASED KARTIK
CHANDRA DAS AND ANR.**

VS

**SRI KAMDEB DAS SINCE DECEASED
SUBHADRA DAS AND ORS.**

For the Appellants : Mrs. S. Das Ray, Adv.
Ms. M. Datta, Adv.

Hearing concluded on : 10.03.2026

Judgment on : 17.03.2026

Sugato Majumdar, J :

The instant second appeal was filed against the Judgment and Decree dated 28/09/1985 passed by the Learned Assistant District judge, Contai Court District-Purba Medinipore, being the First Appellate Court, in Title Appeal No. 15 of 1985, modifying the Judgment and Decree passed by the Learned Trial Judge, dated 15/12/1982, being the Civil Judge, Junior Division, Additional Court, Contai, District-Purba Medinipore, in Title Suit No. 17 of 1982.

The plaint case may be summarized as follow:

- a) 'Ka' Schedule property of the plaint belonged in equal share to one Gangaram, the grandfather of the original Plaintiffs, and his brother Biswanath Das in equal shares.

- b) Prior to District Settlement operation, all the ejmali lands were partitioned between the said Gangaram and Biswanath. On partition, the said Gangaram got the lands which belonged to Khatian No. 13 and the land in the Plot No. 248 in Khatian No. 38. Biswanath got the land in Khatian No. 78 measuring about 12 decimals and the land in the Plot No. 250 in Khatian No. 38. The same was recorded in D. S. Record of Rights. The heirs of Biswanath transferred the land got through partition.
- c) Gangaram had two sons, Nityanand and Baino. Nityanand was the father of the original Plaintiffs. Nityanand's share was 6 decimals of land. On death of the said Nityanand, the original Plaintiffs inherited 6 decimals of land in Plot No. 248. Baino, the father of the original Defendant Nos. 9 & 10 inherited 6 decimals of land in Plot No. 248. Out of these 6 decimals of land, Baino sold 5 decimals of land to the original Plaintiffs through a registered deed dated 20/06/1963. The rest 1 decimal land remained with the said Baino. On death of Baino, his legal heirs being the Defendant Nos. 9 & 10 sold the said 1 decimal of land to the original Plaintiff No. 1 in terms of a registered deed dated 24/06/1975. So the original Defendant No. 1 did not have any share in the Plot No. 248. During settlement operation 10 decimals out of 12 decimals of land in Plot No. 248 was erroneously recorded in the name of Baino.
- d) There was erroneous recording of name in the Record of Rights in respect of Plot No. 248/411, erroneous recording of name of Shyam Sundar Das in respect of Plot No. 255, measuring about 7 decimals and 8 decimals in Plot No. 252 in the Record of Rights were there.
- e) It was averred in the plaint, so far as the Plot No. 252 was concerned, the said Shyam Sundar Das had only 2 decimals of land out of the Plot No.

252 by way of purchase from the said Baino. The original Defendants No. 1-8, being heirs of the said Shyam Sundar Das had only 2 decimals of land in the Plot No. 252. The original Plaintiffs inherited certain shares of land in respect of the Plot No. 252 and purchased 2 decimals of land from the original Defendant No. 9 and 10. Although the deed dated 24/06/1975 stood in the name of the original Plaintiff No. 3, it had been treated as joint family property.

- f) Taking advantage of erroneous recording of names, the original Defendants threatened the original Plaintiff with dispossession. Hence the suit had been instituted by the original Plaintiffs praying for declaration of right, title and interests 'Ka' Scheduled property, permanent injunction and other remedies.
- g) The suit properties belonged to Plot No. 252 (measuring about 6 decimals out of 8 decimals), Plot No. 255 (measuring about 7 decimals) and Plot No. 248/411 (measuring 2 decimals).

The original Defendant No. 1 contested the suit by filing written statements. Contents of the written statement may be summarized as follow:-

1. Brajamohan, the father of Shyam Sundar Das was the grandfather of the original Defendant No. 1 Tulsiram was the father of the said Gangaram and Biswanath. Brajamohan purchased half share of Biswanath in Plot No. 252 and 255, by registered deed dated 19/10/1927. Shyam Sundar inherited the same from Brajamohan.
2. On death of Gangaram, his two sons Nityananda and Baino got half shares in the Plot No. 252 and 255 since the rest half belonging to Gangaram had been purchased by Brajamohan. Nityananda got half shares in the Plot

Nos. 252 and 255 and Baino got half share in the same plots. The division was affected by partition.

3. Nityananda sold his half share to his sister in Plot No. 255. Name of the sister was Sukhada.
4. Shyam Sundar purchased from Baino and Sukhada, in terms of registered deed dated 14/05/1953. Shyam Sundar, thus, inherited 4 decimals of land and purchased 4 decimals of land in the Plot No. 252. Shyam Sundar also purchased 3¹/₂ decimals of land in Plot No. 255. Shyam Sundar gifted land to the original Defendant No. 1 in terms of a deed of gift dated 05/02/1975. Thus, according to the original Defendant no. 1, the original Plaintiffs had no right, title and interest in the suit properties.

On the basis of the rival pleading, the following issues were framed:-

- i. Is the suit maintainable in its present form and prayer?
- ii. Is the suit barred by limitation?
- iii. Is the suit barred under Section 34 of the Specific Relief Act?
- iv. Has the suit been properly valued and court fees paid are sufficient?
- v. Have the Plaintiffs right, title and interest in the suit land?
- vi. Are the Plaintiffs entitled to get a decree as prayed for?
- vii. What relief, if any, are the Plaintiffs entitled to?

The Learned Trial Court, on appreciation of evidence observed that Gangaram got the entire Plot Nos. 252, 255 and 248 as the D.S. Record of Rights recorded the name of Gangaram alone. It was also observed by the Learned Trial Court, among

others, that the original Plaintiffs had half shares measuring 4 decimals out of 8 decimals in Plot No. 252 by way of inheritance. The Trial Court decreed the suit in favour of the original Plaintiffs.

On being aggrieved and dissatisfied, the original Defendants preferred an appeal before the Learned First Appellate Court.

At the time of hearing of the appeal, the parties contended that hearing of the appeal should be confined in respect of the Plot No. 252. So, the Learned Appellate Court proceeded to consider whether the findings of the Learned Trial Court in respect of the Plot No. 252 was correct or not.

The Learned Appellate Court observed that there was no amicable partition between Gangaram and Biswanath as a result, the Learned Appellate Court refused to accept the contention of the original Plaintiffs that Gangaram was exclusive owner of the Plot No. 252. Coming to such conclusion, the Learned Appellate Court set aside the Judgment and Decree passed by the Learned Trial Court in respect of the Plot No. 252.

On being aggrieved and dissatisfied, the instant appeal was preferred.

During pendency of the litigation parties were substituted in view of subsequent deaths.

The following substantial questions of law were framed for hearing the appeal:

- I. For that the Lower Appellate Court has reversed the decision of the Trial Court.
- VI. For that the finding of the Trial Court that the amicable oral partition was held before the District settlement operation between Gangaram

and Biswanath in respect of their paternal property which included the suit lands and accordingly the D.S. R.O.R was rightly prepared and the Plot Nos.252, 255 and 248 were rightly recorded in 23 column in favour of Gangaram alone, not having been reversed on appeal, the Lower Appellate Court used in law in holding that the materials against the presumption of partition are sufficient to establish the Defendant's plea.

- XI. For that the Lower Appellate Court wrongly placed onus of proof upon the Plaintiffs and as such there been a failure of justice.

(Additional Ground)

- XV. For that the Learned Lower Appellate Court failed to consider the admission of the Defendant and the finding of the Learned Trial Court that there is no evidence that either Nityananda or the Plaintiff sold their share in Plot No. 252 to anybody and as such there was failure of justice.

The Respondents/Defendants did not appear at the time of hearing.

The Learned Counsel for the Appellants/Plaintiffs filed written notes of argument. The Learned Counsel argued that the Appellate Court erred in law in ignoring the entries made in District Settlement Record of Rights which recorded that 8 decimals of land in Plot No. 252 (entire plot) and 7 decimals of land in Plot No. 255 (entire plot) were recorded in the name of both Gangaram and Biswanath in Column 13 with a note of exclusive possession by Gangaram alone. Similarly, as argued, Record of Rights in respect of Khatian No. 38 was shown as belonging to Gangaram and Biswanath in equal share. However, in column no. 38, note of exclusive possession of Biswanath alone was recorded, [Ext. 2(a)]. According to the

Learned Counsel the Appellate Court considered Ext. A being a deed dated 19/10/1927 and observed against the original Plaintiffs and the present Appellants that the deed went against the plea of the Appellants of partition between Gangaram and Biswanath. The Learned Counsel argued that the Appellate Court committed error in coming to that conclusion ignoring the entries made in District Settlement Record of Rights. Referring to **Vishwa Vijay Bharati Vs. Fakhrul Hasan & Ors. [(1976) 3 SCC 642]** the Learned Counsel argued that the entries in the revenue records ought generally to be accepted at their face value and the courts should not embark upon an appellate inquiry into their correctness. The Appellate Court did not accept the entries, as argued. Next, referring to **Partap Singh (dead) through Legal Representatives & Ors. Vs. Shiv Ram (dead) through Legal Representatives [(2020) 11 SCC 242]**, the Learned Counsel argued that Record of Rights carry presumption of correctness under Section 35 of the Indian Evidence Act, 1872. Entries in the revenue record ought to be generally accepted at their face value. Presumption of truth in favour of the Record of Rights can be rebutted in case of fraud or in a case where entry had been made surreptitiously. Forgery or fraud robs a document all of its legal efficacy. It was further argued by the Learned Counsel that oral partition of property was common at the time it was made between Gangaram and Viswanath. There was oral partition of the Plot No. 252 between the said Gangaram and Biswanath. The Appellate Court failed to appreciate that evidence, for which the finding deserves to be set aside.

The Appellate Court considered Ext. 2 (a), the District Settlement Record of Rights as well as Ext. A, a certified copy of the deed executed by the sons of Biswanth on 19/10/1927. It came out from the argument of the Learned Counsel for the Appellants that Ext. 2 (a) recorded joint share of Gangaram and Biswanath in the Plot No. 252, though exclusive possession was with Gangaram. There is no apparent

reason to disbelieve such document. The principle laid down by the Supreme Court of India in the aforesaid cases is applicable here also. This document shows only Gangaram's exclusive possession of the Plot No.252. One of the co-owners may have exclusive possession of the joint property. But that itself does not prove that the other co-owners lost or has no right, title and interest therein. The First Appellate Court considered Ext.2(a) and Ext.A. Ext.2(a) is not proof of exclusive ownership of Gangaram of Plot No. 252. Both the exhibits were duly considered by the First Appellate Court in coming to conclusion. The First Appellate Court also considered the amended written statement and the issue of admission. The Learned Appellate Court correctly appreciated both the evidences in negating the plea of oral partition. There is no error committed by the Learned Appellate Court in coming to conclusion and passing the Judgment and Decree dated 28/09/1985.

In nutshell, the instant appeal fails.

The instant appeal is disposed of.

Trial Court Records be returned.

(Sugato Majumdar, J.)