

13.05.2026
Item No.14
266045
Court No.08.
S. De

F.M.A. 1245 of 1997

**Usha Roy & Ors.
Vs.
Sankar Roy.**

Mr. Tanmoy Mukherjee,
Mr. Manoranjan Jana,
Ms. Mitali Jana, ...for the appellants.

Mr. Arabinda Manna, ...for the respondent no.1.

Dictated by Arijit Banerjee, J.

1. This very old First Miscellaneous Appeal of the year 1997 is directed against a judgment and order dated October 10, 1996, passed by learned Additional District Judge, 1st Court, Midnapore in Title Appeal No.144 of 1992.

2. By the said judgment and order, the 1st Appellant Court remanded the matter to the learned Trial Court for fresh adjudication. Being aggrieved, the respondents in the appeal/plaintiffs have come up by way of this appeal.

3. Shorn of unnecessary details, the material facts of the case are, one Lichubala Devi was the owner of certain properties. Lichubala's husband pre-deceased her. She was issue less. After her demise, the present appellants claimed to be her legal heirs through the two brothers of Lichubala. They claimed 2/3rd share in the properties in question. They filed a partition suit claiming 2/3rd share in the concerned properties.

They admitted that the defendant no.1 in the suit was also a legal heir of Lichubala and had 1/3rd share in the suit properties.

4. The defendant no.6 in the suit, Rangabati Pandit, claimed to be the wife of one Botokrishna Pandit who, according to the defendants in the suit, was a step son of Lichubala.

5. The learned Trial Court came to a finding that the defendants could not establish that Rangabati was the wife of Botokrishna nor could the defendants establish that Botokrishna was the step son of Lichubala. Therefore, the claim of the defendant no.1 that he became absolute owner of the suit properties by way of purchase from Rangabati, had no legs to stand upon. Since Rangabati could not establish her title to the suit properties, the question of Rangabati transferring her title to defendant no.1 did not arise. Accordingly, the learned Trial Court decreed the suit in preliminary form declaring 2/3rd share of the plaintiffs and 1/3rd share of the defendant no.1.

6. Being aggrieved, the defendant no.1 appealed against the preliminary decree. Before the 1st appellate Court, the defendant no.1 filed an application under Order 41 Rule 27 of the Code of Civil Procedure, annexing copies of a Voter List and Voter Identity Card in support of his contention that Rangabati was Botokrishna's wife. The learned 1st

Appellant Court held that these documents were not in existence when the suit was decreed. The documents were extremely relevant for the purpose of deciding the issue involved in the suit. Therefore, the documents should be admitted and considered. Hence, the 1st Appellant Court remanded the matter to the learned Trial Court for fresh adjudication after considering the aforesaid documents.

7. Being aggrieved, the plaintiffs in the suit have come up by way of this appeal.

8. Learned counsel for the appellants/plaintiffs argued that even assuming that the documents produced by the defendant no.1 before the 1st Appellant Court establishes that Rangabati is the wife of Botokrishna, nothing was produced before the 1st Appellant Court to show that Botokrishna was the step-son of Lichubala. There is a specific and clear finding of the learned Trial Court that the defendants could not establish that Botokrishna was the legal heir of Lichubala. Hence, according to learned counsel, the remand was an exercise in futility. The 1st Appellant Court should have decided the appeal on merits.

9. Appearing for the respondent/defendant no.1, learned counsel argued that Lichubala's husband Chandrakanta Pandit initially married one Nonibala. Botokrishna was born out of that wedlock. After Nonibala passed away, Botokrishna married

Lichubala. However, learned counsel could not produce any document in support of the aforesaid contention. It also appears that no document in support of such a case was exhibited before the learned Trial Court.

10. Therefore, we see that before the 1st Appellate Court nothing was produced by the appellants therein, to contradict the finding of the learned Trial Court that Botokrishna's relationship with Lichubala could not be established. If that be so, we have to agree with learned counsel for the appellants that the remand was completely unnecessary. No useful purpose would be served since nothing was sought to be produced before the 1st Appellate Court to show, even prima facie, that Botokrishna was Lichubala's step son.

11. In other words, neither before the learned Trial Court nor before the 1st Appellate Court any document was produced by the defendant no.1 to establish that Rangabati inherited any share in the suit properties and the defendant no.1 could, therefore, acquire such share for valuable consideration.

12. In view of the aforesaid, we set aside the order of remand passed by the 1st Appellate Court. The 1st Appellate Court is directed to decide the appeal on merits considering all points that may be urged by the parties before it. The 1st Appellate Court shall decide

the appeal without being influenced by any observation in this order, in accordance with law, observing the principles of natural justice.

13. FMA 1245 of 1997 is disposed of.

14. Let the department send back the Trial Court Records to the 1st Appellate Court immediately.

15. The appellants shall put in requisite Special Messenger Cost with the department within a week from date (May 20, 2026).

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)