

10-04-2026
ct no. 13
Sl. 5
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F.A. 138 of 2017
With
CAN 1 of 2017
Sri Banaful Sett
-Versus-

Smt. Latika Dey & Ors.
(Sri Tapan Kumar Dey since deceased)

Mr. Dibashis Basu,
Mr. Arun Bandyopadhyay.

...for the appellant.

1. Despite service of notice, respondents are not represented.
2. The instant appeal is directed against judgment and order dated 20th January, 2017 passed by the learned Civil Judge (Sr. Division), 1st Court at Hooghly in T.S. 284 of 2007, renumbered from original number as T.S. 8138 of 2014. The Suit was for partition. The common ancestors of the plaintiff and the defendants was Tarak Chandra Dey and Ashima Sundari Dey. After the death of the two persons, their legal heirs became entitled to the suit property. The last legal heir Swapan Kumar Dey, died on 07.12.2001.
3. It is from Swapan Kumar Dey that the plaintiffs and the defendants, derived title to the suit

property. In the written statement filed on 22nd July, 2014 by the respondents-defendants, it was contended that the suit was bad, inter alia, for non-joinder of parties. From the evidence on record it transpired that Tarak Chandra Dey during his lifetime had alienated portions of his property that were enlisted in the schedule to the plaint to third parties. Some portions have been acquired by the Irrigation Department of the State.

4. Some legal heirs of Swapam Kumar Dey on the side of the defendants have not been impleaded as party respondents.
5. The Trial Judge, based on the above allowed the parties to lead evidence. PW-1 on behalf of the appellants-plaintiffs admitted that she was not aware of the acquisition by the State of portions of the properties of Tarak Chandra Dey.
6. The Trial Judge further found from the evidence that indeed some legal heirs of Swapam Kumar Dey were not impleaded and there was a discrepancy between ROR submitted by the plaintiffs and the subsequent RORs of the schedule property.
7. In the light of the above evidence, the suit was dismissed. The Trial Judge further found that despite a lapse of three years from filing of the written statement by the respondents, the

plaintiffs took no step to seek amendment of the plaint to bring the correct parties on record and amend the schedule.

8. In the backdrop of the above discussion of the pleadings and the evidence on record as found by the Trial Judge, this Court is of the view that the impugned judgment dated 20th January, 2017, calls for absolutely no interference whatsoever.
9. It is now well-settled that a suit for partition is dismissed on technical ground, inter alia, for non-joinder of the parties, the same would not preclude filing of a fresh suit for partition. The appellant-plaintiffs are at liberty to do so by noting the defects as pointed out by the Trial Judge.
10. With the aforesaid observations, FA 138 of 2017 shall stand disposed of.
11. Consequently, all connected pending applications, shall also stand disposed of.
12. There shall be no order as to costs.
13. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Rai Chattopadhyay, J.)

