

06.03.2026.
Court No. 13
Item No. 14.
sp/pk

F.A. No. 238 of 2011
With
CAN 6 of 2015(Old No: CAN 2879 of 2015)
Chandi Charan Mondal
Versus
Milton Dey & Ors.

Mr. Lutful Haque,
Ms. Taharima Khatun
Mr. Moniruzzaman.

..for the appellant.

Mr. Sukanta Chakraborty,
Mr. Shaondeep Chakraborty.

..for the respondents.

1. The subject appeal is directed against judgment and decree dated 30th May, 2011 passed in Title Suit No. 92 of 1999.

2. The plaintiff/appellant in the instant suit sought partition of the property comprising in 16 anas. The plaintiff/appellant contended that he had inherited 8 anas of the suit property through his predecessor-in-interest alleged to be one Nibaran Ch. Das. The said Nibaran Ch. Das is stated to have obtained the 8 anas of the suit property in settlement from Raja Mia of Talibpur.

3. The defendants/respondents filed written statement in the suit, challenging settlement in favour of the plaintiff's predecessor-in-interest Nibaran Ch. Das. They contended that the entire 16 anas of the suit property was settled in favour of their predecessor-in-interest Lalit Dutta. The said Lalit

Dutta is stated to have sold the property to Chintaharan Das and Rohini Kr. Das. The defendants are the legal heirs of Chintaharan Das and Rohini Kr. Das.

4. Both parties have led their evidence in the suit. Both the parties admitted that there was a prior suit between their predecessor-in-interest, namely, Chandrahar Dey and Phonibhusan Das and three others being the predecessor-in-interest of the defendants/respondents in the suit. The said suit being Title Suit No. 178 of 1978 was filed where the plaintiffs' Ramranjan Mondal and 3 others predecessor-in-interest were the defendants/respondents.

5. In the said suit, a decree dated 22nd December, 1989 was passed dismissing the plaintiff's claim to the entire 16 anas of the suit property. The defendants' right to 8 anas of the suit property was upheld. The said judgment and decree dated 22nd December, 1989 was carried in appeal being Title Appeal No. 47 of 1990 by the predecessors of the defendants in the instant suit, namely, Chandrahar Dey, Phonibhusan Das and three others. The ADJ of Katwa, by judgment and decree dated 27th August, 1990 set aside the judgment impugned therein and found that neither the appellants herein being the defendants in the suit before the Trial Court nor the respondents therein being the predecessors of the appellants/plaintiffs

herein, could prove the devolution of title of the respective shares.

6. There is a detail discussion and issues were framed by the Lower Appellate Court in the said judgment and decree dated 27th August, 1990.

7. The said appellate decree was never challenged by any party and was, therefore, conclusive. Neither the appellant's predecessors herein nor the defendants' predecessors in the suit in the trial court herein therefore had any title to any part or portion of the suit property.

8. The suit in the instant case being T. S. No. 92 of 1999 (Chandi Charan Mondal Vs. Milton Dey and others) was a suit for partition. The plaintiff/appellant claimed partition of the suit property against the defendants. The Trial Judge found that the subject suit was not barred by the principles of res judicata since the title of the appellant/plaintiff was not the subject matter of T. S. No. 178 of 1978 or T. A. No. 47 of 1990. However, the Trial Judge found on merits that the appellant/plaintiff was not able to establish the devolution of title in his favour.

9. This Court has given due regard to the application filed by the appellant/plaintiff herein under Order 41 Rule 27 to demonstrate that Nibaran Ch. Das was the maternal uncle of the grandmother of the plaintiff, one Subhashini Mondal. The documents and title deeds annexed to the application for introduction of new

evidence in the appeal are placed to suggest that Nibaran Ch. Das did not have any legal heir and his niece, Subhashini is the only heir.

10. The said documents proposed to be introduced before this Court, are no longer relevant. The findings of the Trial Judge is that the plaintiff/appellant could not demonstrate any evidence before the Trial Court of the actual settlement of 8 annas of land in favour of their original predecessor, Nibaran Ch. Das. The said finding is supported by the evidence on record.

11. While the plaintiff/appellant claimed that the settlement in favour of Nibaran Ch. Das was at the instance of a Raja Mia of Talibpur, the original Zaminder, the Trial Judge found that the property was originally in the name of Pattanidar of Sahapur. In substance, the appellant's claim was rejected by the Trial Court.

12. This Court is of the considered view that the Trial Judge committed error in holding that the findings in Title Appeal No. 47 of 1990 in the appellant judgment and decree were not directly or materially in issue in the said title appeal. It went on to commit further error by holding that the plaintiff/appellant herein could not have challenged the said appellate decree.

13. In a suit for declaration of title where the plaintiff asserts a right, title and interest in respect of a particular property and denies the title of a

defendant, both parties are required to adduce evidence in support of their rival claims to the same property or a part or portion thereof. The Court in T. A. 47 of 1990 having clearly held that neither the predecessor of the plaintiff herein nor the respondents/defendants could demonstrate devolution of proper title to the suit property with sufficient reasons and based on the evidence on record, the same constitutes a conclusive declaration. Such declaration is binding on both parties and is appealable by the defendants and consequently res judicata barring any subsequent suit.

14. The findings of the Court in T. A. 47 of 1990 to the extent that entries in the record of rights and payment of rent are not evidence of title, is duly echoed by the Trial Judge in the instant case, albeit for the different reasons, is the law it stands.

15. This Court finds from the evidence on record that both sides have shifted their stands from proceeding to proceeding. Different and conflicting facts are asserted to establish devolution of title to the suit property.

16. This Court's mind is not free from doubt that both the appellant and the respondents may have manufactured documents as found in T. A. 47 of 1990 to dishonestly rectify the defects and loopholes in their respective title or absence thereof. The partition suit

filed by the plaintiff appears to be fraudulent and deceptive.

17. The Trial Judge need not have travelled any further beyond the findings in Title Appeal No. 47 of 1990. In any event, even on an independent assessment of the plaintiff's claim the Trial Judge found that the plaintiff has failed to establish his title to the property.

18. Having found as such against the plaintiff and the findings of T. A. No. 47 of 1990 against the respondents have negated any title asserted by the appellant or the respondents to the suit property. Both parties claim to be in possession of their respective shares since time of the predecessors. This Court does not wish to make any pronouncement in that regard.

19. The impugned judgment and decree shall stand modified to the extent that indicated herein above.

20. With the aforesaid observations, F. A. 238 of 2011 is hereby disposed of. Consequently connected pending application is also disposed of.

21. There shall be no order as to costs.

22. 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.)

