

01.
06.03.2026
Ct.29
Bd.

CRR 5492 of 2025

Sk. Khairul Amin & Ors.
-vs-
The State of West Bengal & Anr.

Mr. Gopal Chandra Ghosh
Mr. Rajkrishna Mondal ... for the petitioners

Affidavit of service filed by the petitioners is taken on record.

Opposite parties are not represented.

The petitioners herein have assailed the complaint case no. C-42/25 under sections 120B/420/465/467/468/471 of the Indian Penal Code, presently pending before learned 6th Judicial Magistrate, Alipore.

The case of the petitioner is that predecessor of the petitioners Sk. Abdul Mohit by a registered Deed of Conveyance dated 14.03.1965 purchased 50% share of Premises No. V- 76, Arka Road comprised in Dag No. 295 and 292. Thereafter the said purchaser had faced inconvenience to possess the property jointly and therefore petitioners said predecessor filed a suit for partition against Abdul Samad Khan, father of opposite party No.2 impleading him as defendant, who claimed to be the transferee from the son of Sk. Sovan Mondal. Upon contest the said suit was decreed in a preliminary form on 07.09.1971 in favour of the plaintiff declaring his eight annas share and also eight annas share to the defendant and the court directed the parties to get the said property partitioned, according to their share by metes

and bound, failing which the parties would be at liberty to appoint a Partition Commissioner for effecting partition.

Thereafter, the predecessor in interest of the opposite party no. 2 preferred an appeal, from such order which was dismissed. Thereafter, another suit on the ground of alleged fraud practiced in the said partition suit was also filed, which was also dismissed. The said dismissal of the suit based on alleged fraud was challenged and carried up to second Appeal, but met the same fate. Hon'ble High Court while dismissed second Appeal directed to appoint partition commissioner. Thereafter the new Partition Commissioner was appointed.

However, opposite party no. 2 who claims to have inherited the moiety share of Sk. Abdul Samad Khan, the original defendant lodged the said FIR to the effect that deed being no. 3173 for the year 1965 in favour of plaintiffs predecessor Sk. Abdul Mohit is a forged and fake deed, containing forged government seal and signature. After completion of investigation police submitted final report in the form of closure of investigation. Opposite party no. 2 herein filed a protest petition and thereafter the court below had taken cognizance upon complaint and started the said complaint case. Petitioner's further case is that without following the procedure laid down in section 223 of the BNSS, the court below had taken cognizance examining the complainant and had issued process against the petitioners.

Being aggrieved by the aforesaid order of taking cognizance and issuance of process, learned counsel for the petitioners

submits that the suit was decreed in preliminary form in the year 1971 in favour of the plaintiff, who is deceased predecessor in interest of the petitioners, declaring plaintiff's eight annas share in the property. Therefore, the question of alleged forgery committed by the petitioners predecessor does not have any leg to stand. He further submits that the partition commissioner has been appointed to effect partition after dismissal of the second appeal.

Having heard learned counsel for the petitioners it appears that court below have failed to appreciate that even if any fraud and forgery is committed by a person, upon his death, his successors/ heirs cannot be held responsible. Furthermore, the civil court has decreed the suit in favour of the petitioners predecessor on the basis of said deed and the complainant's challenge about the legality and validity of the deed, has already been turned down upto this High Court. In order to constitute an offence of forgery a false document has to be created dishonestly or fraudulently to cause damage, which is completely lacking herein in view of civil court judgments. It appears that the dispute if any is purely civil in nature and does not attract any criminality. Therefore, further continuance of the instant proceeding will be a mere abuse of the process of the court.

In such view of the matter, the application being CRR 5492 of 2025 is allowed.

The impugned proceeding being C-42/25 presently pending before learned 6th Judicial Magistrate, Alipore, is hereby quashed.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)