

Present:

**Mr. Justice Sheikh Abdul Awal
And
Mr. Justice Md. Mansur Alam**

**First Appeal No. 37 of 2016
with
Civil Rule No. 443(F) of 2016**

In the matter of:

Memorandum of appeal from original decree
-and-

In the matter of:

Kiron Mondol and others
Defendant-Appellants

Versus

Palash Mondol and others
Plaintiff-Respondents

Mr. Md. Ekramul Islam, Advocate
for the appellant

Mr. M.G. Mahmud Shaheen, Advocate
for the respondent

Heard on: 18.11.24, 06.01.2025 & 09.01.2025
Judgment on: 16.01.2025

Md.Mansur Alam, J

This appeal at the instance of the defendant-appellant is directed against the judgment and decree dated 26.11.2015 (decree signed on 04.01.2016) passed by the learned Joint District Judge, 4th Court, Khulna in Title Suit No.54 of 2011 decreeing the suit.

The facts, relevant for disposal of this appeal, in brief are that the plaintiff-respondent filed Title Suit No. 54 of 2011 praying the following reliefs:

- a) a decree for a declaration of right, title and possession over the suit land;

b) and for a further declaration that the declaration deed No. 498 of 2000 dated 02.03.2000 is forged and not binding upon the plaintiffs.

The plaintiff-respondent Maya Rani Roy and others instituted the aforesaid title suit in the Court of Joint District Judge, 4th Court, Khulna impleading the defendant for declaration of the right, title in the suit land as described in the scheduled of the plaint. The case in the plaint in short is that the suit land as shown in schedule Ka appertaining to S A khatian No.616, plot No. 606, mouja Banishanta under PS Dakope, Khulna was originally belonged to Binapati Dashi. In this background co-sharer Shachindra Nath Gine and Bollov Chandra Mondol instituted Title Suit No.78 of 1960 in the Court of Joint District Judge, Khulna and the suit was decreed on compromise. Shachindra Nath and Bollov Chandra each got 6.73 acres of land. Thereafter Bollov Chandra Mondol died leaving two sons namely Arobindo Mondol and Pondit Mondol. Pondit Mondol died leaving only brother Arobindo Mondol. Arobindo Mondol owned and managed 6.73 acres of land and died leaving one wife and six daughters, who were the plaintiffs in Title Suit No. 54 of 2011. The scheduled land measuring 6.73 acre is not a joint property and the same was owned and possessed exclusively by the predecessor of the plaintiff respondent, Arobindo Mondol, who never executed the alleged declaration deed. The defendant appellant never disclosed the deed No. 498 of 2000 during the life of Arobindo and they for

the first time disclosed it on 06.06.2011 denying the right title of the suit land. Hence the plaintiff respondent instituted the suit.

Defendant Kiron Mondol and others entered appearance in the suit by filing written statement denying all the materials allegations made in the plaint contending inter alia, that there is no cause of action for filing the suit, the suit is barred by limitations, the suit suffers from defect of parties. That Learned trial judge on surmise and conjecture held erroneous view that the suit is worthy of being decreed though the same is not satisfactorily proved by adducing substantive evidence and as such the judgement and decree of the trial court is liable to be set aside.

The learned Joint District Judge upon considering the pleadings of the parties framed the following issues:

1. Whether the suit is maintainable in its present form and manner?
2. Whether the suit is barred by limitation?
3. Whether the suit suffers from defect of parties?
4. Whether the plaintiff have right, title and possession over the suit land?
5. Whether the plaintiffs are entitled to get relief, as prayed for?

At the trial the plaintiff examined 2 witnesses and the defendant also examined 2 witnesses and both the parties submitted documents to prove their respective cases which are marked as Exhibit 1-2 and as Exhibit Ka-Cha respectively.

The learned trial Judge upon hearing and considering the evidence and materials on record by his judgement on 26.11.2015 decreed the suit on the ground that the predecessor of the plaintiff respondent Arobindo inherited the half portion of the property solely from his father and the remaining half portion from his brother Pundit Mondol as he died without having any children. It is also observed by the learned trial judge that Arobindo had no knowledge about the so called declaration deed described in schedule “Kha”, he did not execute that deed, the suit land is not a joint property.

Being aggrieved and dissatisfied by the impugned judgment dated 26.11.2015 passed by the learned Joint District Judge, 4th Court Khulna the defendant-appellant preferred this First Appeal.

Mr. Md. Ekramul Islam learned Advocate appearing for the defendant-appellants in course of argument takes us through the impugned judgment, plaint of the suit, written statements, deposition of the witnesses and other materials on record and then submits that the trial Court below without applying its judicial mind into the facts of the case and law bearing subject most illegally decreed the suit on the grounds that the plaintiff-respondent have been able to prove his right, title and possession over the suit land and their predecessor Arobindo did not execute the alleged declaration deed. Learned trial court also erroneously observed that the plaintiff-respondent are the legal heirs of

Arobindo and they rightly inherited his property according to the Hindu inheritance law.

The learned Advocate further submits that the Plaintiff's predecessor Arobindo executed the alleged declaration deed no 498, so without praying for cancellation of that deed, mere declaration of the same is not sufficient to get the relief, as prayed for. It is further submitted on the part of the appellant that the predecessor of the Plaintiff was a party to the Title Suit No.30 of 1992, he got summons of that suit but never contested to that suit because the suit land was the joint Hindu Family property and he duly executed and registered the impugned Kha scheduled declaration deed in favor of the defendant's appellant. He himself never challenged that deed in any Court. This declaration deed was elaborately appreciated in the suit No.30 of 1992 and Learned Court passed a compromise decree on the basis of that declaration deed. All these things are in the knowledge of the plaintiff's respondents. So as heirs of Arobindo, these plaintiff respondents have no right to challenge the same in this case. Also, it is submitted that the plaintiff sought declaration of title for 6.73 acres of land out of 13.46 acres but they did not specify the same. So, the suit is barred under Order 7 rule 3 Code of Civil procedure.

The Learned Counsel for the defendant appellant further argues that the plaintiffs are the daughters of Arobindo and as they are female group under Hindu law of succession, they will not acquire exclusive title over the suit land, rather they got right to

enjoy the property till their life time and the learned trial Court occasioning failure of justice in decreeing the suit. It is also agitated by the Learned Counsel of the Appellants that there is no right, title over the suit land of the added plaintiffs 7(ka) to 7(cha) and this claim of these added plaintiffs is beyond the pleading. Hence, this appeal must succeed.

On the other hand, Mr. M.G. Mahmud Shaheen the learned Advocate appearing for the plaintiff-respondent contended that under the provisions of Hindu law as it is referred in section 168 and section 88 a wife gets the property of her husband for life time, after her death the Sopicdo of her husband shall be the legal heirs of the property. In the instant case the daughter's son of original owner Arobindo Mondol are made parties to the Case No. 54 of 2011. Bimola Mondol wife of Arobindo Mondol was plaintiff no 7 in Case No.54 of 2011. After the death of Aurobindo's wife and daughters, the male heirs are substituted in that case. In view of the above discussion this suit is very much maintainable.

Learned Counsel for the plaintiffs further submits that previous Title Suit No.30 of 1992 was a suit for partition and declaration of title, Arobindo was made defendant No.1, the said suit was decreed in preliminary form in terms of solenama between the plaintiff and the defendant Nos.2, 3(ka), 5, 6, & 7. In the aforesaid Title Suit No.30 of 1992 Arobindo was made party but he or his heirs are not served Summons notices and similarly Arobindo or his legal heirs are not parties to that solenama. So the

solenama or the decree passed in Title Suit No.30 of 1992 is not binding upon these plaintiff-respondents. As the appellant could not show any final decree, commission report, execution and delivery of possession, so the decree passed in Title Suit No.30 of 1992 was collusive. Learned Counsel for the plaintiff respondent further submits that the suit land is well specified as the schedule land of the plaint of Title Suit No.54 Of 2011 and the schedule of declaration deed No.498 of 2000 are the same with regard to District, P.S, Sub Registrar office, JL number, Mouja, Khatian number and Dag number. In view of the above matter Learned trial Court in appreciating the evidence and materials on record and the relevant laws rightly decreed the suit to the effect that the plaintiff-respondents have right, title and possession over the suit land and the alleged declaration deed as forged and collusive is not binding upon the plaintiff.

Having heard the learned Advocates from both the sides and having gone through the materials on record including the impugned judgment of the trial Court, the only question that calls for our consideration in this appeal is whether trial Court below was justified in arriving at the findings that the plaintiff-respondent have been able to prove their right, title and possession over the suit land and whether the alleged declaration deed No.498 of 2000 is forged and collusive and not binding upon the plaintiff respondent.

Now, let us scrutinize the evidence adduced by the both the parties.

The Pw1 Josna Mondol deposed in her chief that they claimed 06.73 acres of land out of 13.46 acres, this land was belonged to their predecessor Bollov Mondol, Bollov died leaving Pondit and Arobindo, Bollov died unmarried leaving only brother Arobindo, their father thus owned and possessed 06.73 acres land and died leaving these six sisters, they have been possessing the suit land, these defendant refused their (plaintiff's) right title over the suit land, the defendant disclosed a declaration deed after their father's death, they did not know about the existence of that deed, they instituted this suit having the copy of that deed and being aware of the same. Hence they sought for declaration of title over the suit land and a further declaration to that the impugned deed is forged and collusive. To cross, she asserted that their predecessor Bollov earned the suit land and paid rent for his 20 bigha's land, thereafter Arobindo paid rent for that land, thereafter they inherited the suit land after the death of Arobindo. Pw1 denied the suggestions that her father sold his land to the defendant or his father Arobindo executed the alleged declaration deed in favor of the defendants or the suit land is a joint property. Pw2 Giren Mondol stated that the declaration deed dated 02.03.2003 is forged, defendants do not possess the suit land, the daughters of Arobindo possess the same, he himself harvested the rice of the suit land. To cross he deposed that Arobindo possesses 20 bigha and Shochin

possesses the remaining 20 bigha of land. He denied the suggestion that defendant possesses 3.89 acre of land. On the part of the defendant Dw1 Noni Gopal Mondol deposed that the suit property was originally belonged to Sochindra Nath and Ratikanto and their share of each was eight ana's. Arobindo and Promoth inherited the property from their father Bollov, Promoth died unmarried leaving his only brother Arobindo and his share vested to his brother Arobindo. Arobindo executed the declaration deed No.498 of 2000 admitting the suit property is a joint property. Plaintiff's have no possession over the suit land. To cross he admitted that they did not submit any documents to show that they got the suit land from joint property or they have no documents to show that they are member of a joint family. Also he admitted that it is not written in the plaint of case No.78 of 1960 that Arobindo was a member of joint family, Arobindo died in the year of 2011, thereafter Bimola substituted as defendant No.1(ka), Solenama submitted after substitution of Bimola as defendant, Bimola did not execute that solenama. Dw2 Porna Gainie stated that they got eight ana's of land, thus the defendant have been possessing 3.89 acre of lands. To cross he deposed that she could not say who possesses how much land. She admitted that the plaintiff also possesses the suit land.

On meticulous and close perusal of the entire evidence both oral and documentary, we found that the plaintiff respondents claim that they have right, title and possession over the suit land.

Also they claim that the alleged declaration deed No.498 of 2000 is forged, collusive, not acted upon and not binding upon the plaintiffs-respondent. On the contrary the defendant appellant contended that the suit land was not owned by Arobindo alone, it is a joint property. So Arobindo executed the declaration deed and that was submitted in Title Suit No.30 of 1992 and thereafter that suit was decreed on compromise. Now these defendants have been possessing the suit land accordingly.

Now the questions that calls for our consideration in this appeal is that whether the plaintiff respondent have right, title and possession over the suit land and whether the predecessor of the plaintiff Arobindo executed the declaration deed No.498 Of 2000 or whether the same is liable to be declared as forged and collusive.

It is admitted that predecessor of both the parties Shachindra Nath and Bollov altogether got 13.46 decimal land by way of a compromise decree in Title Suit No.78 of 1960. Bollov got 06.73 out of 13.46. Thereafter Bollov died leaving two sons namely Arobindo Mondol and Pongit Mondol. Pongit Mondol died unmarried leaving only brother Arobindo Mondol. All these averments of the plaint is admitted by the Defendants. In this background the defendants contended that Arobindo executed the aforesaid declaration deed in favor of them (defendant) since Bollov earned that property from joint family's income. Plaintiff opposes this contention that Bollov earned the property from joint

family income or as such Arobindo executed the declaration deed in favor of the defendant. The execution of the alleged declaration deed is the claim of the defendant, so the defendant is to prove its own claim. But there is no witness brought before the trial Court who could prove the execution of that deed. The writer of the alleged deed, the witness, identifier of the vendor or anybody who witnessed the execution did not examine to prove the contention of the defendant. The plaintiff claimed that the defendant created the impugned deed by making a different person stand up before the Sub-registrar. The defendant could not produce any oral or documentary evidence to prove that the suit property was earned by joint family income. Since the execution of the impugned deed is not proved by the defendant and the suit property is not earned from joint family income, So Arobindo did not transfer his property by way of declaration deed or by any other way and he died leaving his wife and daughters who inherited his property,

Also it is observed that Title Suit No.30 of 1992 was a suit for partition and for declaration of title. Though Arobindo was defendant No.1 and thereafter his death wife Bimola and others were made defendants to that suit but they never served any summons, So Arobindo or his legal heirs were not parties to the solenama submitted between the Plaintiff and the defendant of Title Suit No.30 of 1992. So the compromise decree of Title Suit No.30 of 1992 is not binding upon this plaintiff-respondent. Defendant appellant could not show any final decree, execution,

delivery of possession to the effect of that compromise decree which reveals that the alleged decree passed in Title Suit No.30 of 1992 is a collusive decree which does not have any binding force on the plaintiff respondents of the instant Case No. 54 of 2011.

Learned Counsel for the defendant appellant argues that the plaintiffs are the daughters of deceased Arobindo Mondol and being members of female group, they do not acquire any exclusive title from their deceased father; rather they got only life time interest over the suit land. So the instant suit is not maintainable as per provision of Hindu Succession law. But on perusal of the provision of Hindu Succession Law it appears that wife gets the property of her husband for life time and after her death the Sopyndo of her husband shall be the legal heirs of the property In this context Order No.88 of Hindu Succession rules about Sopyndo's are relevant to cite here. The Sopyndas of the Bengal school are son, grandson, great grandson, daughter's son etc. Here the daughters son are the Sopyndo of their grandfather Arobindo. Learned Counsel for the plaintiff respondent referred the name of Diponkor Mondol, Udoyon Mondol, Polash Mondol, Hiraj Mondol, Sotoz Mondol were substituted in this suit as they are Sopyndo of Arobindo Mondol. So the Plaintiff respondent rightly complied the provision of Hindu Succession Law.

Learned Advocate for the defendant appellant further submits that though the plaintiff respondent instituted this suit for a decree of declaration but the suit land is not specified in the plaint.

So the learned trial Court was wrong in passing decree on an unspecified land. But on close perusal it is of the evident that the schedule of the plaint and that of the alleged declaration deed are the same with regard to District, PS, Sub-Registry office, JL number, Mouza, Khatian number, Dag number etc. So the scheduled land in the plaint is well specified in decreeing the suit for declaration of title.

On meticulous and close perusal of the entire evidence both oral and documentary, we found that the defendant-appellant has failed to prove that the suit land was earned from joint family income of Bollov Mondol or of Arobindo Mondol or as such Arobindo Mondol executed the impugned declaration deed in favor of the defendant appellant or Arobindo Mondol was served notice in Title Suit No.30 of 1992 or he or his legal heirs were parties to the Solenama. Reversely the plaintiff-respondent has been able to prove that they have right title and possession over the suit land and the impugned declaration deed No.498 of 2000 is forged, collusive, not acted upon, illegal and not binding upon the plaintiff respondent.

In view of our discussion made in above by now we are of opinion that instant appeal must failed.

In the result, the appeal is dismissed.

The judgment and decree dated 26.11.2015 (decree signed on 04.01.2016) passed by the learned Joint District Judge, 4th

Court, Khulna in Title Suit No.54 of 2011 decreeing the suit is hereby affirmed.

Since the appeal is dismissed, the connected rule being Civil Rule No.443(F) of 2016 is hereby discharged without any order as to costs.

The order of status-quo granted earlier by this Court at the time of issuance of the Rule is hereby recalled and vacated.

Send down the lower Courts record with a copy of this Judgment to the Courts below at once.

Sheikh Abdul Awal, J

I agree