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2. Smt. Mahesaya Roy,
wife of Sri Hiralal Roy,
both residing at Village Chakmasar,
P.S. Jadavpur, Calcutta - 700 086,
District : South 24-Parganas.
Defendants/Appellants/Petitioners.

- Versus -

Smt. Mati Rani Ghosh,
wife of Late Haroj Kumar Ghosh,
of Village Paschim Rajapur,
P.S. Jadavpur, Calcutta - 700 032.
District : South 24-Parganas.
Plaintiff/Respondent No. 1/Petitioner.

Application valued at Rs. 22,29,200/-

2. Kirona Barman
Dr. J. M. Barman
3. Anupama

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IN THE HIGH COURT AT CALCUTTA

Appellate Civil Jurisdiction

Appeal from Original ^{Memorandum} No. 71 of 1975 ✓Appeal preferred on the 06th day of December 1975 against the
Decision of Shri K. K. DasAgent of Zilla Assistant Dist. Judge, 3rd Court, Alipore.
dated the 22nd day

September 1975, in Title Suit No. 200 of 1787 ✓

led the

of 19

1. Sri Hiralal Roy, son of Late Bipin Bihari Roy.
 2. Smt. Mahanagar Roy, W/o - Sri Hiralal Roy.
- Both residing at village - Chakmasari, P.S. Jadarpur
Calcutta - 700 086.

Dependants/Appellants ✓

VERSUS

1. Smt. Motimoni Ghosh, W/o Late Sri Suroj Kumar Ghosh,
Vik - Paschimrajapur, P.S. Jadarpur,
Dist. - 24 Parganas (South), Calcutta - 700 086.

- * 2. Sri Kiron Chandra Bardhan
26E, Baghajatin colony, P.S. Jadarpur,
Dist. 24 Parganas (South)

- * 3. The Commissioners of Towns West Bengal,
6/2, Madan Street,
Calcutta - 700 013.

* The names of Respondents nos 2 & 3 deleted
under Court's order dated 21.3.2000.

Respondents

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Appeal valued, for purposes of jurisdiction, at Rupees 22,00,000/- (Rupees Twenty Two Lacs
and Hundred only.)

On the compromise petition being (CAN 7612/99)
Upon the hearing of this Appeal in a Division Court before

The Hon'ble Justice Tarun Chatterjee.

and

The Hon'ble Justice Anil Talukdar
and for disposal
on the 08th

of the Judges of this Court,

day of February, 2000

at

As above
24.3.2000

~~to be ordered and decreed that~~

And it being stated by the learned Advocates on behalf of both sides that the matter in dispute out of which this appeal arises has been settled out of court between the parties and in proof thereof a joint petition of compromise signed by the learned Advocates for both sides and the parties themselves and containing the terms on which the said settlement has been arrived at having been filed and it being prayed amongst other things that this appeal be disposed of in terms of the petition of compromise;

And it is ordered and decreed by and with the consent of the parties expressed through their respective Advocates that the appeal be and the same is hereby disposed of in accordance with the terms contained in the said petition of compromise which is hereto annexed and marked with the letter 'A' be kept as of record and do form part of this decree and the said parties do give effect to and be bound by the said terms of compromise.

Dated this the eighth day of February, 2000.

AS
A.R. (ex)
20/7/2000

Sunil Kumar Bhattacharya
Advocate on behalf
of the Plaintiff Respondent
26.7.2000

Tochir Bhattacharya
Advocate
on behalf of the appellants
27.7.2000

JB Karmungo
SR (Court) 29.7.2000

Sen
F. Chatterjee, J
3/8/2000

A. Taturkar, J
7/8/2000

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M.10 (2nd Sheet)

Noting by office or Advocate	Serial No.	Date	Office notes, reports, Orders or proceedings with signature.
		8.2.2000.	<p>Re: An application for recording compromise of being CAN No.7612 of 1999 affirmed on 30.8.99.</p> <p>Mr. Dilip Chatterjee, Mr. Prabir Chatterjee....For the defendants/ appellants.</p> <p>Mr. Suprabhat Bhattacharyya...For the plaintiff/ respondent.</p>

This is an application for joint compromise
arrived at by the parties.

We have considered the terms and conditions
as stated in paragraph-7 of the said compromise
petition and after going through the same, we are
satisfied ^{that} ~~with~~ the said terms and conditions are
legal, valid and binding.

Accordingly, this appeal is disposed of on
compromise and the application for compromise shall
form a part of the decree.

Let the L.C.R., if any, be sent down to the
court below immediately.

✓ ~~No formal decree to be drawn up in this appeal.~~

T. Chatterjee, J.
(Tarun Chatterjee, J.)
A. Talukdar, J.
(Amit Talukdar, J.)

*Pradip Das
H-2 (let)
8/2/2000*

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(2nd sheet)

F.A. 77 of 97.

No. of 19

Serial No.	Date.	Notes and Orders.
1 T. Chatterjee, S.N. Bhattacharjee, JJ.	21.3.2000.	<p>Mr. Prabir Chatterjee... for the appellants. Mr. Suprabhat Bhattacharyya.. for the respondent.</p> <p>This matter has been placed at our instance as "To be mentioned". From the record, it appears that joint compromise was effected between the appellants nos.1 and 2 and the plaintiff/respondent no.1 only. Therefore, a point arisen whether the respondents nos.2 and 3 who were parties in the suit ^{but} did not enter appearance in the suit before the trial court would be necessary parties in the appeal or not. In paragraph 6 of the application for joint compromise it has been categorically stated that the respondent no. 2, Kiren Chandra Bardhan and the respondent no. 3 Commissioner of Wakfs were not necessary parties. Accordingly, the names of the respondents nos. 2 and 3 who have also not joined in the compromise petition be deleted from the Memo of Appeal.</p>

T. Chatterjee, J
S.N. Bhattacharjee, J

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DISTRICT : SOUTH 24-PARGANAS.

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

CAN 7612/99

PA 77/97

In the matter of :
an application for recording
compromise of the appeal and the
suit from which the appeal arises.

- AND -

In the matter of :
F.A.No. of 1999 and
F.A.T.No. 3686 of 1995.

- AND -

In the matter of :
Sri Hiralal Roy & Another
..... Appellant.

- Vs -

Smt. Mati Rani ~~Das~~ Ghosh & Ors.
..... Respondents.

- AND -

In the matter of :
1. Sri Hiralal Roy
son of Late Bipin Behari Ray

.....2.

Handwritten notes:
Hiralal Roy & Another
Smt. Mati Rani Ghosh & Ors.

Handwritten notes:
Smt. Mati Rani Ghosh & Ors.

Handwritten notes:
Smt. Mati Rani Ghosh & Ors.
Smt. Mati Rani Ghosh & Ors.

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2. Smt. Mahamaya Roy,
wife of Sri Hiralal Roy,
both residing at Village Chakmasar,
P.S. Jadavpur, Calcutta - 700 086,
District : South 24-Parganas.
..Defendants/Appellants/Petitioners.

- Versus -

Smt. Mati Rani Ghosh,
wife of Late Saroj Kumar Ghosh,
of Village Paschim Rajapur,
P.S. Jadavpur, Calcutta - 700 032.
District : South 24-Parganas.
..Plaintiff/Respondent No.1/Petitioner

Application valued at Rs.22,00,200/-

To

The Hon'ble Mr. Satyabrata Sinha, Acting Chief Justice
and His Companion Justices of the said Hon'ble Court

The humble petition of Compromise of the
defendants/appellants/petitioners and the
plaintiff/respondent No.1/petitioner

Most respectfully sheweth :-

1. That the defendants/appellants/petitioners have preferred this appeal against the Judgement and decree dated 22.9.1995 passed by the Learned Asstt. District Judge (now Civil Judge, Senior Division), 3rd Court at Alipore in Title Suit No.200 of 1987. By the said impugned judgement and decree the Learned Trial Court held that the suit property

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comprising 1.20 acres of Wakf land belonging to the Wakf Estate of Kazi Sadat Ali and recorded in C.S.Dag Nos.31, 33 and 34 of C.S.Khatian No.13 and at present recorded in R.S.Dag Nos.40, 42 and 43 of R.S.Khatian Nos.50, 70, 71, 72, 74, 75, 76, 77, 78, 49, 61, 62, 63, 65, 66, 67, 68 and 69 created out of present R.S. Khatian No.17 of Mouza Chak Masar, P.S. Jadavpur, Calcutta - 700 086, District 24-Parganas (South) as described in Schedules A and B of the plaint has been absolutely owned and possessed by the plaintiff/respondent/petitioner on the basis of her purchase by registered Kibala dated 27.1.1968 from Hirendra Lal ~~Sarkar~~ Sarkar who in his turn purchased the property from the Mutwallis of the said Kazi Sadat Ali Wakf Estate with the approval of the Commissioner of Wakfs and on deposit of the consideration price therefor with the Wakf Bank. The Learned Trial Court also held that the defendants/appellants/petitioners were in wrongful possession of the suit land having no right, title or interest therein and they acquired no right, title, interest or possession in respect of the suit lands on the basis of their alleged Agreement for Sale with the Constituted Attorney of the Mutwallis of the said Wakf Estate of Kazi Sadat Ali. As the defendants respondents Nos.2 and 3, Kiron Chandra ~~Bardhan~~ Bardhan and the Commissioner of Wakfs did not enter appearance in the suit in Trial Court, the Learned Trial Court decreed the suit ex parte against them and directed the defendants/appellants/petitioners to vacate the suit properties giving delivery of vacant khas possession thereof to the plaintiff in course of one month from the

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said date of decree. The plaintiff was also given right to execute the decree and take delivery of possession of the suit property through Court in case the defendants/appellants did not deliver possession to the plaintiff in course of the said period of one month.

2. That previously the said defendant, Kiron Chandra Bardhan as plaintiff filed a suit in the 1st Court of Munsiff at Alipore against the instant defendants/appellants for declaration of his title and permanent injunction in respect of the suit properties and the said suit being transferred to the second Addl. Court of the Munsiff at Alipore was renumbered as Title Suit No.57 of 1975. Also previously the instant plaintiff/respondent filed in the 1st Court of the Munsiff at Alipore a suit for declaration of her title in respect of the entire suit land and recovery of possession of 4 Cottahs of land on which the instant defendants/appellants wrongfully raised hutments and upon transfer to the second Addl. Court of the Munsiff at Alipore the said suit was renumbered as Title Suit No.63 of 1975.
3. That both the said Title Suit No.57 of 1975 and Title Suit No.63 of 1975 were heard analogously and upon such contested hearing, the Learned Second Addl. Court of the Munsiff at Alipore was pleased to dismiss Title Suit No.57/75 filed by Kiron Chandra Bardhan and decreed the Title Suit No.63/75 filed by the instant plaintiff/respondent in favour of the plaintiff with the finding that the plaintiff was the rightful owner of the entire suit property and the instant

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defendants/appellants was in illegal and wrongful possession of 4 Cottahs of land described in schedule 'B' to the plaint and that the other defendant, Kiron Chandra Bardhan and the Commissioner of Wakfs had no right, title, interest or possession in respect of the suit lands. As against the said Judgement and decree of the Learned Second Addl. Court of Munsiff at Alipore, the instant defendants/appellants preferred Title Appeal No.1001 of 1979 and the defendant Kiron Chandra Bardhan preferred Title Appeal Nos.1037 and 1038 of 1979 all in the Court of the Learned District Judge at Alipore and upon contested hearing the Learned 12th Addl. District Judge was pleased to dismiss Title Appeals Nos.1037/79 and 1038/79 and partly allowed Title Appeal No.1001/79 with the finding that Kiron Chandra Bardhan has no right, title, interest or possession in respect of the suit property, that the plaintiff, Mati Rani Ghosh was the rightful owner of the suit properties and that the instant defendants/appellants were in illegal and wrongful occupation of the entire suit properties. With the aforesaid finding the said Learned Appellate Court was pleased to dismiss the Title Suit No.57/75 filed by Kiron Chandra Bardhan and send the Title Suit No.63/75 filed by the instant plaintiff/respondent back on remand to the Learned Trial Court with liberty to the plaintiff to amend the plaint seeking recovery of possession of the entire suit property. Thereupon the plaintiff duly amended the plaint in terms of the direction given by the Learned Appellate Court.

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4. That as against the Judgement and decree passed by the said Learned Lower Appellate Court (12th Addl. District Judge at Alipore) in Title Appeals Nos. 1001 of 1979, 1037 of 1979 and 1038 of 1979, the said respondent, Kiron Chandra Bardhan preferred Second Appeal No. 553 to 555 of 1982 before the Hon'ble High Court and subsequently, on the application of the appellant, Kiron Chandra Bardhan, all the said Second Appeals were dismissed by the Hon'ble High Court for non-prosecution. Thereafter the instant defendants/appellants as the defendants/respondents and cross objectors in the said Second Appeal No. 555 of 1982 pressed for hearing and disposal of the cross objection preferred by them on merits and after contested hearing, the said cross objection was dismissed by the Hon'ble Mrs. Justice Jyotirmoyee Nag as being not maintainable in law.
5. That thereafter the said Title Suit No. 63 of 1975 came up for hearing after remand before the Learned Trial Court (2nd Addl. Munsiff at Alipore), when it was found that the valuation of the suit after amendment of plaint exceeded the pecuniary jurisdiction of the said Trial Court. As such, as per direction given by the Lower Appellate Court, the said Trial Court was pleased to return the plaint for filing in proper Court. Thereupon the plaintiff respondent refiled the said plaint in the present Trial Court, namely the Third Court of Assistant District Judge (now Civil Judge, Senior Division) at Alipore and the instant Title Suit No. 200 of 1987 was started thereon. It is pertinent to mention herethat although both the previous

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Handwritten notes:
Kiron Chandra Bardhan
Commissioner of Wakfs
Title Suit No. 200 of 1987

Trial Court and Lower Appellate Court held that the defendants/respondents, Kiron Chandra Bardhan and the Commissioner of Wakfs had no right, title, interest or possession in respect of the suit property or any portion thereof, in the said new suit started on refiling the previously filed plaint, the said Kiron Chandra Bardhan and the Commissioner of Wakfs were still retained as defendants. But the said defendants, Kiron Chandra Bardhan and the Commissioner of Wakfs did not appear in the said Title Suit No.200 of 1987 and did not contest the suit and did not raise any claim in respect of the suit properties and only the defendants/appellants filed written statement and contested the suit which was, therefore, decreed on contest against the defendants/appellants and exparte against the said other defendants, Kiron Chandra Bardhan and the Commissioner of Wakfs. As such the defendants/appellants have preferred this appeal from original decree against the said judgement and decree passed by the Learned Trial Court, namely, the Court of the Learned Asstt. District Judge, Third Court at Alipore in the said Title Suit No.200 of 1987.

6. That in the premises aforesaid the said respondents Nos.2 and 3, Kiron Chandra Bardhan and the Commissioner are not at all necessary parties and their names should be expunged from the cause title of the appeal.

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7. That further, in the premises aforesaid, and in view of the long drawn litigation as aforesaid and enormous costs incurred by them in prosecuting the said litigations and at the intervention of common friends and well-wishers, the aforesaid defendants/appellants and the plaintiff/respondent have settled their disputes out of Court and have Compromises the above appeal and the concerned Title Suit No.200 of 1987 on the following terms :-

- (a) Accepting the finding of the Trial Court regarding the title and possession of the parties in respect of the suit property and also considering the uncertainty of the result of litigation and enormous costs to be incurred by both the parties in further proceeding with and/or defending the above First Appeal over and above the time require for getting the appeal disposed of on contest, the defendants/appellants and the plaintiff/respondent have made an equitable division and distribution of the suit property amongst them. Upon such division and distribution, the plaintiff/respondent with her four sons and one daughter have exclusively and absolutely obtained .14 (fourteen decimal acres) of land more or less being the front and northern half portion of C.S.Dag No.31 (R.S.Dag No.40) as marked, shown and delineated by red borders (boundary lines) in the map or site plan annexed hereto as the full, absolute, sixteen annas owners thereof and the remaining .14 (fourteen decimal) acres more or less being the southern half portion of the said C.S.Dag No.31 (R.S. Dag No.40) marked, shown and delineated by blue

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borders (boundary lines) in the map or site plan annexed hereto has been obtained exclusively and absolutely by the defendants/appellants as the full, absolute, sixteen annas owners thereof. Both the parties shall have the right to use the 4' ft. wide passage lying on the attached east of the said C.S.Dag ~~Mark~~ No.31 (R.S. Dag No.40).

- (b) Upon such division and distribution the plaintiff/respondent and her four sons and one daughter have exclusively and absolutely obtained .33 (thirty three decimal acres) or one bigha of demarcated land comprising portions of C.S.Dag nos.33 and 34 (R.S.Dag Nos.42 and 43) being the eastern demarcated portions of the said C.S. Dag Nos.33 and 34 marked, shown and delineated by red borders (boundary lines) in the map or site plan annexed ~~xxx~~ hereto as the full, absolute, sixteen annas owners thereof and the remaining western portion of the said C.S.Dag Nos.33 and 34 (R.S.Dag Nos.42 and 43) measuring .60 (sixty decimal acres) more or less as marked, shown and delineated by blue borders (boundary lines) in the map or site plan annexed hereto has been obtained exclusively by the defendants/appellants as the full, absolute sixteen annas owners thereof. The said portion of the suit land obtained by the plaintiffs/respondents have been marked as Lot A and Lot A₁ and the said portions of the suit lands obtained by the defendants/appellants ~~xx~~ have been marked as Lot B and Lot B₁. As per promise of both the parties, a demarcate plot of land measuring .05 (five decimals acres), in

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C.S.Dag No.33 (R.S.Dag No.42) within Lot B₁ property obtained by the defendants/appellants, has been given by the defendants/appellants to the mediator Sri Gopal Sheel son of Late Santosh Sheel of Nayabad, P.S. Kasba, Calcutta - 94 who has obtained the said land as the full, absolute sixteen annas owner thereof. The said .05 acres of land has been marked as Lot C.

8. That on the aforesaid terms and condition the above appeal shall be ~~sum~~ decreed and disposed of and the concerned Title Suit No.200 of 1987 of the 3rd Court of Asstt. District Judge (now Civil Judge, Senior Division) at Alipore shall be decreed and disposed of without any cost making this petition of Compromise as parts of the decree.
9. That the parties shall bear their own costs of the suit and appeal.
10. That this petition is filed bonafide and in the interest of ~~justice~~ justice.

Your petitioners, therefore, prays that your ~~M~~ Lordships may be pleased to pass ~~necessary~~ necessary order recording Compromise and decreeing and dispersing the appeal and the concerned Title Suit No.200 of 1987 of the 3rd Court of Asstt. District Judge (now Civil Judge, Senior Division) at Alipore making this petition of Compromise parts of the decree and be pleased to pass such other or further order or orders as your Lordships may seem fit and proper.

And your petitioners as in duty bound shall ever pray.

AFFIDAVIT.

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AFFIDAVIT

I, Sri Hiralal Roy son of Late Bipin Behari Roy, by religion Hindu, by occupation business, aged about 75 years, residing at Village Chakmasar, P.S. Jadavpur, Calcutta - 700 086, District South 24-Parganas, do hereby, solemnly affirm and say as follows :-

1. That I am the defendant/appellant No.1/petitioner No.1 and husband and agent of the defendant/appellant No.2/petitioner No.2 and acquainted with the facts and circumstances of the case. This is true to my knowledge.
2. That statements made in ~~xxxxxx~~ paragraphs 1, 2, 3, 4, 5, 6, 7(a)(b), 8 and 9 of the foregoing petition are true to my knowledge and the rest thereof are my humble submissions to this Hon'ble Court.

Signature

Prepared in my office.

Prabir Chatterjee
Advocate.

Deposited known to me :-

Bimalendu Sarkar.
Clerk to Mr. D.K. Chatterjee
Adv.

*Solemnly affirmed
before me on
30.11.18*

SECRETARIES OF APPELLATE
High Court, Appellate Staff,
Calcutta.

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A F F I D A V I T

I, Smt. Mati Rani Ghosh, wife of Late Garoj Kumar Ghosh,
by religion Hindu, by occupation house-wife, aged about 65 years,
residing at Village Paschim Rajapur, P.S. Jadavpur, Calcutta - 32,
District South 24-Parganas, do hereby, solemnly affirm and ~~say~~
say as follows :-

1. That I am the plaintiff/respondent/petitioner and acquainted
with the facts and circumstances of the case. This is true to
my knowledge.
2. That statements made in paragraphs 1, 2, 3, 4, 5, 6, 7(a)(b),
8 and 9 of the foregoing petition are true to my knowledge
and the rest thereof are my humble submissions to this
Hon'ble Court.

Prepared in my office.

Sunanda Bhattacharya

Advocate.

Known to me :-

Haripada Cheluvarti
Clerk to Mr. S. Bhattacharya
Advocate

*Solely verified by me
before me on 10.3.99*

Commissioner of Magistrate
High Court, Appellate Judge,
Calcutta

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