

4-10-12 - 5-12-12 - 5-12-12 - 5-12-12<sup>196</sup> - 7-12-12

ESX - 2123 / 12  
In the Court of Ld. Sth. Civil Judge (Sr. Divn) at  
Alipura.

TS - 187 / 2011

Sri Sankar Ghosh

vs.

Smt. Binmala Ghosh & 9 others

SL-801/12  
ESK-2129/12  
Judgment  
Decree 1034  
T-1234

HEADING OF JUDGEMENT IN ORIGINAL SUIT/CASE

DISTRICT : 24-PARGANAS (SOUTH)  
IN THE COURT OF : CIVIL JUDGE (SR.DIVN.), 5TH COURT, ALIPORE  
PRESENT : SMT. SHARANYA SEN  
CIVIL JUDGE (SR.DIVN.), 5TH C COURT, ALIPORE

.....Saturday..... of the 15<sup>th</sup> day of September, 2012

TITLE SUIT/CASE NO. 187 of 2011

- 1. SRI SANKAR GHOSH
- 2.
- 3.

Plaintiff(s)  
Petitioner(s)

- VERSUS -

- 1. SMT. RAMALA GHOSH & 9 OTHERS.
- 2.
- 3.

Defendant(s)  
Opposite Party(s)

*Sharanya Sen*  
15-9-12  
Civil Judge (S.D.)  
5th Court, Alipore  
Smt. Ramala Ghosh & 9 others

This suit / case coming on for final hearing on 6-2-12, 15-3-12,  
2-5-12, 22-5-12, 3-9-12,  
5-9-12,  
in the presence of

SRI SWAPAN KR. CHATTERJEE

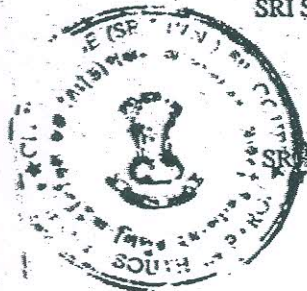
Advocate(s)  
Pleader(s)

for  
Plaintiff(s)  
Petitioner(s)

SRI SMRITI RANJAN BANERJEE

Advocate(s)  
Pleader(s)

for  
Defendant(s)  
Opposite Party(s)



and having stood for consideration to this day, the court delivered the following judgment.

This is a suit for partition, declaration and injunction.

TITLE SUIT NO.187 OF 2011

Plaintiff's case, in brief, is that one Kali Charan Ghosh alias Kalipada Ghosh was the owner of a land measuring about 3 cottah 2 chittak 75 sq.ft. together with an one-storied brick-built building at 43, Anjuman Ara Begum Row, P.S. Jadavpur, Kolkata-33. Said Kali Charan Ghosh died on 10-09-62 leaving behind him surviving his 6 sons namely, Panchanan Ghosh, Ajit Kr. Ghosh, Sailen Ghosh, Sukumar Ghosh, Rabin Kumar Ghosh and Prabir Kumar Ghosh as his legal heirs and representatives and they became the owner of 1/6<sup>th</sup> portion each jointly of the suit property. One of the sons of said Kali Charan Ghosh namely Rabin Ghosh left the house and started living at Cuttack. He was unmarried but after 1984 whereabouts of said Rabin Ghosh was not traceable by other members of the family. In the year 1985 Sukumar Ghosh, the fourth son of Kali Charan Ghosh alias Kalipada Ghosh received a message by a letter that said Rabin Ghosh left the world for heaven. Thereafter, the brothers of said Rabin Ghosh tried to take information and trace him out but they failed. After leaving the house in the year 1972 said Rabin Ghosh never came back to the suit premises. Ajit Kumar Ghosh died in the year 1986 leaving behind him surviving defendant Nos.5 to 8 as his legal heirs and representatives. Sailen Ghosh, another son of Kali Charan Ghosh had gifted his share in favour of plaintiff by a registered deed of gift dated 18-04-2005. On 04-10-09 another son of Kali Charan Ghosh namely, Sukumar Ghosh died and his share in the property devolved upon his other brothers. Now, plaintiffs are facing difficulty in joint possession of the suit property along with the defendants. Accordingly, by filing this suit plaintiff prayed for partition, declaration that Rabin Ghosh alias 'Gopali' is dead as he is unheard of for more than

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*Sumendu Ghosh*  
15-9-12  
15-9-12  
15-9-12



TITLE SUIT NO:187 OF 2011

seven years ; declaration of share of the parties of the suit ;  
injunction and for other relief.

Defendant of this suit by filing written statement stated that Rabin Ghosh left the house in the year 1972, and thereafter, he is not traceable and also prayed for declaration of share in their favour.

On the above pleadings following issues are framed :-

ISSUES

- 1) Is the suit maintainable in its present form and in law?
- 2) Do the plaintiff have any cause of action to file the suit?
- 3) Whether the parties of the suit are co-sharers in respect of the suit property?
- 4) Is the plaintiff entitled to get the decree, as prayed for?
- 5) What other relief, if any, plaintiff is entitled to get?

To establish their respective case, plaintiff adduced evidence as P.W.1 and defendant No.4 adduced evidence as D.W.1 and some documents are tendered and marked as exhibits.

Deed being No.4272 of 1963 marked ext.1, declaration marked ext.2, deed of gift No.3150 of 2005 marked ext.3, death certificate of Panchanan Ghosh, Ajit Ghosh and Sukumar Ghosh marked exts.4, 4(a) and 4(b), K.M.C. Tax bill and receipt marked ext.5 and 5/a, letter issued by K.M.C. Marked ext.6, telegram marked ext.7, post card marked ext.8 and power of attorney marked ext.A are the documentary evidences.

Contd. .... /

*Shri Anil Kumar  
15-9-12*

*18*

DECISION WITH REASONS

Issue Nos.1 to 3

All the 3 issues are taken up together for proper adjudication.

This is a suit for declaration and partition. As per plaint case, all the parties of the suit are the co-sharers of the suit property. Previously, one Kali Charan Ghosh was the owner of the suit property and said Kali Charan Ghosh died on 10-09-62 leaving behind him surviving 6 sons namely, Panchanan Ghosh, Ajit Kr. Ghosh, Sailen Ghosh, Sukumar Ghosh, Rabin Kr. Ghosh and Prabir Kr. Ghosh. After the demise of said Kali Charan Ghosh his 6 sons acquired right, title and interest in respect of the suit property as per law of inheritance. Plaintiff's further case is that Rabin Kr. Ghosh left the suit premises and started living at Cuttack and he was unmarried. But after 1984 the whereabouts of said Rabin Kr. Ghosh was not traceable by the other brothers and other members of the family. Along with the prayer for decree of partition plaintiff also prayed for declaration of presumption of civil death of said Rabin Kr. Ghosh. Ext.1, title deed being No.4272 of 1936 shows that by that deed one Asha Lata Mitra transferred the property in favour of Radha Rani Dasi w/o Kali Kumar Das property of Mouza-Chandpur, Touzi No.155, J/L No.41, Khatian No.614, Dag No.780 measuring an area of 3 cottah 2 chittak 28 sq.ft. land. Ext.2 is a declaration sworn by Panchanan Das, Ajit Kr Das, Sailen Das, Sukumar Das, sons of Kali Charan Das alias Kali Charan Ghose that they are originally

*Shri. M. S. Das*  
15-9-12  
Judge (Sr. Div.)  
Court, Alipore  
South 2<sup>nd</sup> Paragon

Contd. ....

TITLE SUIT NO.187 OF 2011

Ghose but in the title deed of their family 'Das' was written in place of 'Ghose'. In that declaration marked ext.2 there is no description of property. Ext.3 is the deed of gift executed by Sailen Kr. Ghosh in favour of Shankar Ghosh. By that deed donor had gifted the ground floor flat measuring about 536 sq.ft. along with roof right for further construction on the roof at premises No.43, Anjuman Ara Begum Row. Ext.4 (series) are the death certificate of Panchanan Ghosh, Ajit Kr. Ghosh and Sukumar Ghosh. Ext.5 is the K.M.C. tax receipt in respect of premises No.43, Anjuman Ara Begum Row in the name of Panchanan Ghosh, Ajit Kr. Ghosh, Sailen Ghosh, Sukumar Ghosh, Rabin Kr. Ghosh and Prabir Kr. Ghosh and Ext.5/a is the tax bill. Ext.6 is the letter issued by Deputy Assessor Collector of K.M.C. Ext.7 is a telegram which shows that by that telegram dated 10-05-84 one T.P. Manna informed Sukumar Ghosh of 43, Anjuman Ara Begum Row that one 'Gopali' is seriously ill and said T.P. Manna asked the addressee to come. Ext.8 is a post card which shows that one Manna Da informed that 'Gopali' is no more. He died at a Hospital.

*Shovamoy Ghosh*  
 15-7-12  
 5th Col. ...  
 South ...

Defendant of this suit by filing written statement and during evidence as D.W.1 admitted the fact that another name of Rabin Kr. Ghosh was 'Gopali' and he also admitted the existence of telegram and letter by which information of death of said 'Gopali' was communicated to the predecessor of the parties of this suit.



Section 107 of Indian Evidence Act stated that when the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is

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TITLE SUIT NO. 187 OF 2011

dead is on the person who affirms it.

Section 108 of Indian Evidence Act stated that provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

The propositions regarding the scope of the presumption arising under Section 108 are, firstly, the occasion for drawing a presumption arises when the dispute regarding the death of the person is raised in a court of law ; secondly, the presumption is a rebuttable one ; thirdly, there can be no presumption that the person died during or at the end of the said period ; and lastly, the question as to when he died has to be proved like any other fact. Before a presumption under Section 108 is raised it has to be found out by making an appropriate enquiry that the person has not been heard of for seven years by those who ought to have heard of him.

*Shri M. V. Srinivasulu*  
*15-9-12*  
South 44 Pet 3008

A man not heard of for seven years can be deemed to have met with civil death and not death occasioned on his last breath.

There are two main senses in which the word "presumption" is used. Firstly, a presumption sometimes means nothing more than a conclusion which must be drawn until the contrary is proved ; secondly, and more frequently, it denotes a conclusion that a fact exists which may, or must, be drawn if some



other fact is proved or admitted.

In this particular case, plaintiff's case is that for more than seven years they did not hear about said 'Gopali' or Rabin Kr. Ghosh since 1984. But they filed before the Court one telegram of 1984, Ext.7 which shows that one person informed Sukumar Ghosh that said 'Gopali' is seriously ill and one post card, Ext.8 shows that one Manna da informed that Rabin Ghosh alias 'Gopali' is dead. In this case defendant also admitted the above fact. Parties of the suit did not deny the fact that 'Gopali' is dead or that he is not alive or has not been heard of.

So, on consent it appears before the Court that parties of this suit admitted the fact that 'Gopali' alias Rabin Kr. Ghosh is dead.

In this case, as the plaint is drafted, plaintiff has cause of action to file the suit of partition. Plaintiff's suit is not barred by any law and plaintiff's suit is maintainable. On admission and from documents i.e. ext.1 to 3 and 5 (series) it shows that parties of the suit are the co-sharers in respect of the suit property. Sailer Ghosh by a deed of gift had transferred his share in the property to the plaintiff.

So, after discussion this Court holds the view that plaintiff is a co-sharer of the suit property along with defendant Nos.1 to 10 of this suit, and accordingly, the above issues are decided in favour of plaintiff.

Issue Nos.1 to 3 are thus disposed of.

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*Shovanmoy Ghosh*  
15-7-12

321  
201



## TITLE SUIT NO.187 OF 2011

Issue Nos.4 and 5

Both the issues are taken up together for adjudication.

In this case, parties of the suit admitted the fact that 'Gopali' alias Rabin Kr. Ghosh is dead. In this case it is the case of the parties of the suit that said Rabin Kr. Ghosh alias 'Gopali' died as a bachelor and after his death his share in the property devolved upon his brothers. Sukumar Ghosh, another son of Kali Charan Ghosh died as a bachelor on 04-10-2009 and after his death his share in the property devolved upon his brothers. It appears from the case record that Sukumar Ghosh died on 04-10-2009 and his brother, Ajit Kr. Ghosh died on 09-02-83. So, share of Sukumar Ghosh devolved upon his surviving brothers i.e., Sailen Ghosh and Prabir Kr. Ghosh. Deed of gift shows that before the death of Sukumar Ghosh Sailen Kr. Ghosh had transferred his share in the property in favour of Shankar Ghosh. At that time in the year 2005 Sailen Kr. Ghosh was the owner of 1/5<sup>th</sup> share of the suit property who transferred his share to Shankar Ghosh, plaintiff of this suit. Shankar Ghosh by that transfer became the owner of Sailen Ghosh's 1/5<sup>th</sup> share in the property along with 1/5<sup>th</sup> share of Panchanan Ghosh's 1/5<sup>th</sup> share. It appears that plaintiff is the owner of 6/25<sup>th</sup> share. Defendant Nos. 1, 2, 3 and 4 are the owner of 1/25<sup>th</sup> share each. Defendant Nos.5 to 8 are the owner of 1/20<sup>th</sup> share each and Prabir Kr. Ghosh is the owner of 1/5<sup>th</sup> share and half share of Sukumar Ghosh's 1/5<sup>th</sup> share i.e. 1/10<sup>th</sup> share totalling to 3/10<sup>th</sup> share and Sailen Ghosh is the owner of half share of Sukumar Ghosh's 1/5<sup>th</sup> share i.e. 1/10<sup>th</sup> share.

Contd. .... /



*Myadun*  
15-9-12

## TITLE SUIT NO.187 OF 2011

In this case, on the basis of ext.8 document and on consent of the parties, plaintiff has been able to establish the fact of presumption of civil death of Rabin Kr. Ghosh alias 'Gopali'.

Accordingly, considering all the aspect this court holds the view that plaintiff of this case has been able to establish his case and entitled to get the decree.

Above issues are thus decided in favour of plaintiff.

Court fee paid is correct.

Hence,

it is ORDERED

that the suit be and the same is decreed in preliminary form against the defendants on contest but without any cost.

Plaintiff is entitled to get a decree in part against the defendants but without any cost.

Plaintiff do get a preliminary decree of partition of the suit property against the defendants declaring plaintiff's  $\frac{6}{25}^{\text{th}}$  share in the suit property and defendant Nos.1 to 4 are the owner of  $\frac{1}{25}^{\text{th}}$  share each and defendant Nos.5 to 8 are the owner of  $\frac{1}{20}^{\text{th}}$  share each, defendant No.9 is the owner of  $\frac{3}{10}^{\text{th}}$  share and defendant No.10 is the owner of  $\frac{1}{10}^{\text{th}}$  share in respect of the suit property.

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*Shrimony adin*  
15-9-12  
Civil Judge (Sr Dist)  
5th Court, Aipore  
South 24 Parganas



TITLE SUIT NO.187 OF 2011

Parties of this suit are given three months time to effect amicable partition of the suit property, failing which plaintiff will be at liberty to apply for partition of the suit property by metes and bounds by appointing an Advocate Commissioner through Court.

The said Commissioner shall effect partition making allotments keeping as far as practicable the respective possession of the parties in the suit property..

Dictated & corrected by me.

*Shyamprakash*  
15-9-12

Civil Judge (Sr.Divn.)  
5<sup>th</sup> Court, Alipore  
24-Parganas (South)

*Shyamprakash*  
15-9-12

Civil Judge (Sr.Divn.)  
5<sup>th</sup> Court, Alipore  
24-Parganas (South)

Civil Judge (Sr.Divn.)  
5<sup>th</sup> Court, Alipore  
South 24-Parganas

Civil Judge (Sr.Divn.)  
5<sup>th</sup> Court, Alipore  
South 24-Parganas



HIGH COURT FORM No. (J) 25  
DECREE IN ORIGINAL SUIT  
(Order 20, Rules 6 and 7 Code of Civil Procedure)

District South 24 Parganas

Civil Judge In the Pr. Bin Court of 5th at Alipore

T. Suit No. 187 of 2001

Sankar Ghosh, s/o. Late Panchanan Ghosh, by  
faith - Hindu, by occupation - Service, residing  
at 43, Anjuman Ara Begum Row, P.S. - Tadarpur  
Kothala- 700033.

Plaintiff

- Versus -

- ① Ramala Ghosh, w/o Late Panchanan Ghosh
- ② Swapan Ghosh, s/o. Late Panchanan Ghosh, both residing at 43, Anjuman Ara Begum Row, P.S. - Tadarpur - 700033. ③ Kalpana Banerjee, D/o. Late Panchanan Ghosh, w/o. Vivekananda Banerjee, residing at 90, Mairai Park, P.S. - Regent Park, 700070. ④ Arpana Raha, s/o. Late Panchanan Ghosh, w/o. Sandip Raha, residing at - 62/13, Halipada Dutt Lane, P.S. - Tadarpur - 700033. ⑤ Tyotsna Ghosh, w/o. Late Ajit Kumar Ghosh. ⑥ Basudev Ghosh, s/o. Late Ajit Ghosh, both are residing at 43, Anjuman Ara Begum Row, P.S. - Tadarpur, 700033. ⑦ Jaip Biswas, s/o. Late Ajit Ghosh, w/o. Sri Narayan Biswas, residing at Rajendra Prasad Colony, P.S. - Tadarpur, 700033. ⑧ Keya Ghosh, D/o. Late Ajit Ghosh, w/o. Suleis Ghosh, residing at 10/18, Banku Behari Ghosh Lane, Bally Hoobrah. ⑨ Pralim Kumar Ghosh, s/o. Late Kali Charan Ghosh. ⑩ Halipada Ghosh, residing at 43, Anjuman Ara Begum Row, P.S. - Tadarpur, 700033.

Defendants

Proforma Defendant

Suit for Declaration, Partition and Injunction  
Valued at Rs. 10,01,200/- Only.

IN THE COURT OF THE  
JUDGE IN CHARGE  
OF THE DISTRICT COURT

This suit coming on this day for final disposal before Ld. Civil Judge (Sr.)  
5th Court, Alipore in the presence of  
Sri Swapan K. Chatterjee (Adv) for the Plaintiff  
and of Sri Smriti Ranjan Banerjee (Adv) for the Defendant.

It is ordered and decreed that the suit be and the same  
is decreed in Preliminary form against  
the defendants on contest but without  
any cost.  
Plaintiff is entitled to get a decree in  
part against the defendants but without  
any cost.

Plaintiff do get a preliminary decree of  
partition of the suit property against the  
defendants declaring plaintiff's 6/25th share  
in the suit property and Defendant nos. 1 to 4  
are the owner of 1/25th share each and  
defendant nos. 5 to 8 are the owner of 1/20th  
share each, defendant no. 9 is the owner of  
3/10th share and defendant no. 10 is the owner  
of 1/10th share in respect of the suit property.

Parties of this suit are given three months  
time to effect amicable partition of the  
suit property, failing which plaintiff will be  
at liberty to apply for partition of the suit  
property by metes and bounds by appoint-  
ing an Amicable Commissioner through court.

The said Commissioner shall effect partition  
making allotments keeping as far as  
practicable the respective possession  
of the parties in the suit property.

(3)

SCHEDULE

ALL THAT piece and parcel of land measuring more or less 3 (three) Cottages 2 (two) Chittacks 75 (seventy five) square feet together with one storied brick built building standing thereon Municipal Premises No. 43 of Anjuman Ara Begum Row, P.S. - Tadarapur, Kolhala - 700033 within Ward No. 94 hutted and bounded as follows: -

- ON THE NORTH - by 10' wide Road
- ON THE SOUTH - by Premises No. 44,
- ON THE EAST - by Premises No. 37
- ON THE WEST - by 12' wide Road.

and that the sum of Rs.

be paid by the

to the

in account of the costs of this suit, with interest thereon at the rate of

percent per annum from this date to date of realisation.

Given under my hand and the seal of this Court, this\*

\*Enter here the  
date of the  
Judgement

15th day September 12

Certified that the addresses given above are the addresses furnished by parties for service.

S. Saha  
25.9.12

Judge

Civil Judge (Sr. Division)  
5th Court, Alipore  
South 24 - Parganas  
3.10.12

N. B. - This Judge shall make an autograph note stating the date, month and year on which the decree is signed and initial the corrections or alterations, if any.

(4)

## COSTS OF SUIT

Plaintiff	Rs.	P.	Defendant	Rs.	P.
1. Stamp for plaint	200	-	1. Stamp for Power	10	-
2. Stamp for power	10	-	2. Stamp for petitions and affidavits	30	-
3. Stamp for petitions and affidavits	80	-	3. Cost of exhibits including copies made under the Bankers' Books' Evidence Act. 1891		
4. Cost of exhibits including copies made under the Bankers' Books' Evidence Act. 1891.			4. Pleaders' fee	5000	-
5. Pleaders' fee on Rs.	5000	-	5. Subsistence and travelling allowance of witnesses (including those of party, if allowed by judge)		
6. Subsistence and travelling allowance of witnesses (including those of party, if allowed by judge)			6. Process fees		
7. Process fees	10	-	7. Commissioner's fees		
8. Commissioner's fees			8. Demi-paper	30	-
9. Demi-paper	52	-	9. Cost of transmission of records		
10. Cost of transmission of records			10. Other costs allowed under the Code and Civil Rules and Orders.		
11. Other costs allowed under the Code and Civil Rules and Orders.			11. Adjournment costs not paid in cash (to be added or deducted as the case may be)		
12. Adjournment costs not paid in cash (to be added or deducted as the case may be)					
Total	5352	-	Total	5070	-

NOTE 1. The parties should apply as soon as possible for the return of all exhibits which they may wish to preserve as they will be destroyed at the time prescribed by the High Court (Rule 557 *et. seq.* Civil Rules and Orders. vol. 1).

NOTE 2. The above note or the Schedule of costs shall be penned through if there are no exhibits for return or no costs in favour of any party (see Note 1 to rule 486. Civil Rules and Orders. vol. 1).