

142

6-11-13    21-11-13    21-11-13    2-12-13    3-12-13

ED-5054/13

West Bengal Form No.3702

HIGH COURT FORM NO.(J)3

HEADING OF JUDGEMENT OF APPEAL

District : 24-Parganas (s)

In the 8th court of Additional District Judge, Alipore.

Present : Sri Sudeb Mitra, Additional District Judge 8th court  
Alipore. South 24-Parganas.

Monday, the 30 day of September, 2013.

Title Appeal No.208 of 2003

(Arising from Title suit No.103 of 1986)

from the decree/order of made in suit/case No.

As Constituted Attorney  
of land owners

**SABITA ROY CHOWDHURY**  
**PRABIR ROY CHOWDHURY**  
**ANUBIR ROY CHOWDHURY**  
**ANASHI CHATTERJEE**

Munsif /Subordinate Judge of                      and of

Sikha Tapaswi                      . . . . . Appellant.

*-vs- R-*  
Sabita Roy Chowdhury & Others                      . . . Respondents.

Ashim Tapaswi                      . . . . . Proforma Appellant/plff.

This appeal coming on this day (or having been heard  
on) in the presence of.

Indro Ch.Gupta Advocate for Appellant.

Swapna Chakraborty Ganesh Bromhachari                      . . . . . Advocate for  
Respondent/pleader.

**B. S. GROUP**

*Subrata Sena*

**B. S. GROUP**

*Badam Roychowdhury*



Schedule of	128
Applicants	36
Folio	3
Amount	62
Expenses	
Searching	
Writing	
Other Fees	





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*Subrata Saha*  
Partner

**B. S. GROUP**

*Babun Roy Chowdhury*  
Partner

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**SABITA ROY CHOWDHURY  
PRABIR ROY CHOWDHURY  
SUBIR ROY CHOWDHURY  
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should have held that the suit is bad for partial partition and should have dismissed the same. It has been further agitated by the appellant that the Id. court below should have held that the suit is bad for non joinder of necessary parties. The Id. court below, as agitated by the appellant while assailing the impugned judgement, has failed to consider the salient features that the predecessor in -interest of the plaintiffs, Sitanath Roy Chowdhury acquired no interest on the basis of Deed dated 9.3.1950 purportedly executed by Kishori Mohan Tapaswi who was a mentally retarded person and as such, not entitled to get any share in the suit property according to the provision of the then Hindu law and on that ground, the Id. court below should have dismissed this suit.

By filing the instant title appeal the appellant has agitated further that the Id. court below has failed to consider this aspect of the case that all the five sons of Amritalal Tapaswi died before the death of their mother and as such, the plaintiffs are not entitled to get from them any share in the suit property at all. The Id. court below without just cause erroneously had held in the impugned judgement that the appellant's predecessor -in-interest has no right.

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title and interest in the suit property, and the ld. court below should have held that the request of demarcated share by a will in respect of a joint property is invalid and by such request no right is transferred. It is submitted by the appellant, as the other ground of appeal in respect of the impugned judgement that the ld. court below while considering the matters in issue of title suit no. 103 of 1985 did not consider that the predecessor in-interest of the appellant side has given certain portions of the suit property and as such, finding that the deidts have no right, title and interest in the suit property, is perverse and not sustainable in the eye of law. The ld. court below has failed to consider that the appellant except the portion bequeathed by the will of Jibon Papowal, he has also has left certain other portions of suit property and those are to be devolved according to the settled inheritance law as such the lower court below is wrong to hold that Jibon Papowal had no share in the suit property. By filing this, the appellant has prayed for setting aside the impugned judgement.

It is submitted as per detail as that the court below has failed to consider the statement of Jibon Papowal and the statement of the appellant.



**B. S. GROUP** Plaintiff of A.S. 103/1986 filed by Kanupriya Roy Chowdhury

*Subrata Kumar* reflects that he had filed the suit against the defdts as <sup>Part<sup>n</sup></sup> contained in the amended plaint of the suit dated 23.8.2004

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*Rajmou Roy Chowdhury*

Partner

praying for partition and injunction in respect of the suit property as mentioned in the schedule of the amended plaint. By filing this instant suit the plaintiff contended that the suit property originally belonged to the ownership and possession of Hiralal Tapaswi and Amritalal Tapaswi having

As Constituted ~~Attorney~~ equal undivided half share. Hiralal Tapaswi passed away leaving of land owners **PRABIR ROY CHOWDHURY** his only son Jiban Krishna Tapaswi who inherited half **PRABIR ROY CHOWDHURY** share of Hiralal Tapaswi. On the other hand, Amritalal Tapaswi **SUBIR ROY CHOWDHURY** MANASHI CHATTERJEE expired leaving behind his wife and four sons who inherited

Amritalal's half share in the property. Thereafter wife of Amritalal Tapaswi passed away leaving behind Amritalal's four son namely, Rishikesh, Kishori Mohan @ Kishorilal, Kesablal and Ajit. They inherited the two annas share each of the property of Amritalal i.e. four sons in total inherited 8 annas share of Amritalal. Rishikesh and Kishorilal thereafter sold their 4 annas share to the plaintiff's father Situnath Roy Chowdhury by a registered Deed of sale dated 9.5.1950 and other two sons of Amritalal since deceased namely, Ananta

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*Sulrata Devi*  
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and Ajit sold their 4 annas share to the deftdno.1 of the suit namely, Kastick Nath who is represented by the substituted defdts 1(ka) and 1(jha) (as reflected in the amended plaint) by a registered Deed of sale dated 18.4.1952. As the father of

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*Bandun Roy Chowdhury*  
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the plaintiff had been facing difficulty in possessing the suit property jointly with the deftdno.1 and predecessor of defdts 2 to 11, as reflected in the amended plaint of this suit dated 23.8.2004, So a plan for partition was prepared and as per

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**MANASHI CHATTERJEE**

er plan plaintiffs had been in possession of their 1/4th share of the suit property by surrounding the same with brick wall during the tenure of their father and during that period when Krishna died and thereafter, the father of the plaintiffs Sitanath Roy Chowdhury also passed away and the other heirs of the Plaintiffs subsequently gifted their respective shares inherited by them from Sitanath in favour of the plifs, and in that process, the plaintiffs since became the owner of the 1/4th share of the suit property including the property which they inherited from their father.

It is the specific contention of the plaintiffs now represented by his substituted successors to that effect that, if Sir and Subir Roy Chowdhury died on the basis



**B. S. GROUP** the plan for partition, the defdtno.1 filed F.S.377/1974 for  
*Subrata Chandra*  
 Partner eviction of his tenant before the appropriate court of the  
 ld.5th munsif (the then)at Alipore and similarly following the  
 ba is of the plan for partition Jiban Krishna Tapaswi had also

**B. S. GROUP** sold some of his properties out of his 8 annas share to some  
*Radam Roy Chowdhury*  
 Partner other purchasers and for that reason in respect of this suit,  
 those purchasers have been made respective parties in this  
 suit. It is the contention of the plaintiff side that though  
 the parties are possessing the suit property but actually no  
 permanent partition deed was prepared. For this the plaintiff/  
 respondent side is facing difficulty in possessing the suit

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 property without any encumbrances and since the plaintiffs  
 request the defdt to effect amicable partition of their  
 respective shares in that property in issue has failed, so  
 the plaintiffs have filed F.S.No.103/1986 praying for reliefs  
 as specifically reflected in the prayer of the plaint as can be  
 seen from the amended plaint dated 23.8.2004. Though the  
 defdts 12 to 14 have filed written statement but they have not  
 contested the said title suit.

The defendants no. 4 to 7 have contested in the said  
 title suit by filing written statement respectively contending





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*Subrata Sen*  
**Partner**

inter alia that the plaintiffs have no cause of action and the suit is not maintainable in its present form and law since it is bad for nonjoinder of necessary parties. By filing written statement the defendants no. 4 to 7 stated that Rama Sankar Mukherjee, executor of the estate of late Jiban Krishna Tapaswi, Bhabani Chakraborty, his brother and sisters are necessary parties in this suit, but they have not been impleaded as party in this suit. By filing this written statement they have contended that Rabin Tapaswi had no right, title interest and possession in the suit property.

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*Bodhan Roy Chowdhury*  
**Partner**

By filing written statement dated 10.7.1987 in file No. 103/1986 defendant no. 4 to 7 have submitted that the plaintiff is not entitled to the relief as prayed for.

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SUBIR ROY CHOWDHURY  
MANASHI CHATTERJEE**

The specific case of the defendants no. 4 to 7 is that the suit property was partitioned by means and bounds by a deed between Jiban Krishna Tapaswi, Sitanath Kartick Ch. Nath (defendant no. 1) and in that partition 8 annas share was allotted to Jiban Krishna Tapaswi, Sitanath Roy Chowdhury being the father of the then plaintiffs Kanupriya, etc. was allocated the demarcated 4 annas land and similarly Kartick Nath was allotted 4 annas land. It is further contended by the defendants no. 4 to 7 that Jiban Krishna during his lifetime had sold



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MANASHI CHATTERJEE

- 9 -

**B. S. GROUP**  
*Bhuban Mohan*  
Partner  
away some of his properties to Smt. Jalabala Chakravorty and Samar Purkati. The said Jiban Krishna and Amritalal had also sold out some portions of their land to one Sudhin Hanna who subsequently sold the same to Bijoy Ghosh, Biren Ghosh and

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*Bhuban Roy Chowdhury*  
Partner

Dulal Ghosh. After the disposal of some portion of the land of the said Jiban Krishna, Jiban Krishna had demarcated 16 cottah 5 chitak 20 sq. ft. of land together with one storied building and its structure standing thereon and it was duly mutated in the Assessment Register of the then South suburban Municipality in his name being holding nos. 57 and 51, Bosepara Road, thereafter it came under Kolkata Municipal Corporation bearing holding no. 14, Bosepara. It is the specific contention of the dectrs no. 4 to 7 that the said property had been possessed by the said Jiban Krishna, Sitamath Roy Chowdhury and Kartick Nath had no right, title and interest in the exclusive property of Jiban Krishna and they had no possession over there also and Jiban Krishna was in the exclusive possession of the said property. Later Jiban Krishna bequeathed demarcated 5 cottah 7 chitak land together with building and structure standing thereon to his wife Kamala Dasgupta, demarcated 5 cottah 6 chitak of land to his daughter



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 MANASHI CHATTERJEE

**S. GROUP**  
*Siddhartha Dasgupta*  
 Partner  
 Dipali Tapaswi and he demarcated 2 cottans 1 chitak 15 sq.ft. of land and demarcated 5 cottan 15 chitak 8 sq.ft. tank for his son Siddhartha Tapaswi by executing the registered Will dated 16.7.1983 and appointed Ramashankar Mukherjee as

**S. GROUP**  
*Basham Raychowdhary*  
 Partner  
 executor to the estate of Jiban Krishna, Jiban Krishna Passed away in 1984 and after his death the afore stated estates and other properties mentioned in the Will were vested to the executor. Later Ramashankar filed Act XXIX case No. 276/85 before the court of Md. District Judge, Alipore for obtaining probate in respect of the properties of Jiban Krishna

Papaswi, later he became the O.S. 18 of 1986 before the court of Md. District Judge, Alipore and finally that O.S. was transferred to the 6th court of Md. District Judge, Alipore and the case is numbered as O.S. 18 of 1987.

In the case of these deaths that the property of Jibanash was nucleus in the assessment Re ister of south garden undeply and subsequently Jibanash Roy Chowdhury he offered the same in the name of one then Jibanash Roy Chowdhury now substituted by his successors in interest and the said also entered before the court of Md. District Judge, Alipore and the case is numbered as O.S. 18 of 1987.



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shares. Similarly, the name of Kartick was also separately mutated in the C.M.C. in respect of his property. One Nibaran Thakur Chakraborty trespassed into the demarcated land of Kartick. The suit filed by Kartick against Nibaran Thakur Chakraborty for eviction resulted against Kartick on contest. Nibaran Thakur Chakraborty died intestate leaving behind his three sons and five daughters who inherited the estate of Nibaran Thakur Chakraborty. So the heirs of Nibaran are necessary parties in T.S. 103 of 1986. The suit property has been partitioned by means and bounds as agitated by these defendants by and between all the original co-sharers and the said partition have been acted upon long ago by virtue of oral partition in the year 1953. These defendants have further contended that the plaintiffs obtained specific demarcated portion of the suit property as per their 4 annas share and after partition the co-sharers have recorded their respective names regarding their exclusive possession and since the property has been partitioned only orally, so the present suit is not maintainable in law and in view of the above facts, the defendants no. 4 to 7 have prayed for dismissal of the suit.

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The specific case of the defendants 2 and 3 is that Amrit Lal died leaving behind his wife Giribala and five



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*Subrata Suman*  
Partner

sons namely, Kishikesh, Keshori Mohan, Kesab, Kiron and Ajit and they all inherited the shares of Amritalal. It is contended by these defdts 2 and 3 that Amritalal died leaving behind his wife and four sons and Kiron Tapaswi died unmarried. So the individual share of Kiron Tapaswi had been

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*Roshini Roy Suman*  
Partner

inherited by his mother Giribala who passed away after the life interest of her sons. It has further been agitated by these defdts. that Kiron Tapaswi was mentally retarded person and for that reason he had never executed any Deed of sale on 9.3.1950 in respect of his share in favour of Sitanath Roy Chowdhury at all as he had no such capacity to execute such Deed. It is contended by these defdts 2 and 3 that the alleged Deed dated 9.3.1950 was obtained by false personification of Kishori Tapaswi. It is further agitated by these defdts through their written statement that after the demise of Kishori Tapaswi his two sons Swapan Tapaswi and Kholka Tapaswi inherited Kishori's share as his successors in interest and record of rights were accordingly prepared. The defdts, 2 and 3 submitted further that the father of the plaintiffs Kanupriya, etc. now substituted by successors in interest on admission had never obtained possession of the suit property by virtue of the



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**B. S. GROUPE** alleged Plan. By filing this written statement, these debts. *Shubrajit Datta* further contended that the suit was not properly valued since *Partner* the pl intiffs had no possession in the suit property and all the joint properties of the parties of this suit were not

**B. S. GROUPE** brought in the hotch pot of the partition suit and for this the *Partner* ~~Shubrajit Datta~~ debt no. 2 and 3 prayed for dismissal of the suit.

It appears from the materials on record and the impugned *Partner* judgement in T.S. 103 of 1986 dated 17.7.2003 that the suit *Partner* ~~Shubrajit Datta~~ has been decreed in favour of the plaintiffs. On perusal of the evidences on record, scanning the same and weighing the same together with the exhibited documents, the Id. court below pronounced the impugned judgement on 17.7.2003 and decree was prepared on 28.7.2003.

Aggrieved by and dissatisfied with the said judgement and decree the debt/appellant side in the form of Jayanti and Sikha Tapaswi preferred this instant title appeal and since Jayanti had subsequently passed away so as per prayer of the remaining appellant Sikha Tapaswi, d/o Rabin Tapaswi who eventually had passed away on 2.8.2003, has been consenting this appeal as the sole appellant/debt. During the continuance



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MANASHI CHATTERJEE

- 14 -

tion of appeal one of the respondent /plaintiff Kanupriya passed away and for this he was substituted by the present respondent namely, Sabita, Prabir and Subir Roy Chowdhury as successors in interest.

Point of Determination

**B. S. GROUPO**

*Subrata Sen*

Partner

Now the moot questions to determine as to whether and if so how far the instant title appeals legally

**B. S. GROUPO** entertainable and it is to be determined further as to whether *Partner* the impugned judgement and decree of T.S.103 of 1986 dated

Partners 17.7.2003 and 28.7.2003 respectively is sustainable in the eye of law or not.

DECISION WITH REASONS

It appears from the case record that in T.S.103 of 1986 filed from the end of the Plaintiff the then plaintiff Kanupriya Roy Chowdhury son of Sitnath Roy Chowdhury deposed. It appears from the materials on record that plaintiffs brother Chintamani Roy Chowdhury passed away on 24.6.1988 and subsequently, his wife Pithika also passed away. At that point of time only plaintiff no.1 Kanupriya, since deceased, and substituted by the successors in interest Sabita, Prabir and Subir Roy Chowdhury, was the sole plaintiff of T.S.103 of 1986 During the course of



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SARITA ROY CHOWDHURY

PROBATE & ESTATE EXECUTOR

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*Subrata Sarker*

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*Parham Roy Chowdhury*

*-157-1*

Parham's testimony as P.W. 1. In the said title suit he has furnished and proved the sale deed of 1950 more specifically 9.3.1950 by which his father purchased the suit property (exbt. 1). He has furnished and proved the Deed of gift and marked as exbt. 2 on admission by which title transpired that after the demise of his father other successors in interest of his father in respect of the suit property, mainly the said plaintiffs mother, sister had executed the Deed of gift in favour of the plaintiff and his brother Chintamani. He has furnished the certified copy of judgement passed in T.S. 603 of 1952 in respect of suit Dag No. 45 passed by the then 1st Munsif, Alipore from which T.A. 490 of 1958 was preferred before the then 5th Sub Judge, Alipore and finally the appeal was preferred before the Hon'ble High court. The certified copy of the said decree is marked as exbt. 3. He has also proved the ~~mutation~~ mutation certificate (exbt. 4) P.W. 1. During the course of his testimony furnished the certified copy of the Deed of Sale from which it transpires that Kishori Mohan, Rishkesh, both sons of Amritalal sold their shares to Sitanath Roy Chowdhury and before that in 1948, the four sons of Amritalal along with their mother Giribala and other co-





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**B. S. GROTP**

*Sudhkr. Jena*

**B. S. GROTP**

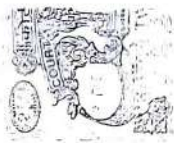
*Padma*

*Roy Chowdhury*  
- 16 -  
Partner

Partners namely, Jiban Krishna Tapaswi sold 14 ~~maxims~~ decimals

of property to Sudhkr. Manna. The certified copy of the said Sale deed is marked as exbt. 5 Int. S. 103 of 1986. P.W.1. has also furnished and proved the agreement for amicable partition along with the map in respect of the suit property entered into in between Jiban Krishna Tapaswi, Sitanath and Kartick Chatter Nathand the same is marked as exbt. 6 on admission. Besides all P.W.1. Kanupriya has furnished the letters written by Kishorilal @ Mohan @ Gour written to the father of the P.W.1. Act of this suit and the same are marked as exhibits -7 series. Besides this the plaintiff side through P.W.1. did not produce any other document.

So far as the D.W.1. of the said title suit Dipalhi Tapaswi is concerned, she is the deftd. no. 6 of the said suit as per previous written statement dated 30.7.1986 represent- ing herself and deftds no. 4, 5 and 7, She has furnished and proved the tax receipts on payment of taxes to the Municipal authority in respect of their shares in the suit property and the one is marked as exbt. 4. She has also furnished the certified copy of the Assessment Register in respect of the property and the same is marked as exbt. B She has proved



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*Subrata Das*

Partner

**B. S. GROUP**

*Badam Roy Chowdhury*

Partner

- 17 -

the certified copy of the Assessment Role in respect of the plaintiff's premises and the same is marked as exbt. B/1. She has also furnished and proved the modified partition plan of the suit property and the same is marked as exbt. C. She has deposed categorically that on 16.7.1983 Jiban Krishna Tapaswi made a registered Will in respect of his properties as specifically described in the said Will and she has further deposed that after the demise of Jiban Krishna Tapaswi, Rama Shankar Mukherjee became the executor of the said Will, left by D.W.1.'s father and Rama Shankar filed a case in Alipore Court being Act XXXIX Case No. 276/1985 for the purpose of getting the probate of the said Will executed by Jiban Krishna Tapaswi. Later the said suit became contested and O.S. 18 of 1986 was started. On transfer of the said suit to the then 6th Court of Id. Addl. Dist. Judge. Alipore the suit was renumbered as O.S. 8 of 1986 and it was decreed on contest and the D.W.1. filed the certified copies of the judgement and decree. It appears that the defdt. of the said T.S. ~~1788~~ 103 of 1986 Rabin Tapaswi preferred an appeal before the Hon'ble High Court and the same was dismissed on contest. The certified copy of the Judgement of the Hon'ble High Court arising from O.S. 8 of 1987 pronounced on 25.9.1997



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*B. S. Gropp*  
Partner

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the certified copy of the Assessment Role in respect of the plaintiff's premises and the same is marked as exbt. B/1. She has also furnished and proved the modified partition plan of the suit property and the same is marked as exbt. C. She has deposed categorically that on 16.7.1983 Jiban Krishna Tapaswi made a registered will in respect of his properties as specifically described in the said will and she has further deposed that after the demise of Jiban Krishna Tapaswi, Rama Shankar Mukherjee became the executor of the said will, left by D.W.1's father and Rama Shankar filed a case in Alipore Court being Act XXXIX Case No. 276/1985 for the purpose of getting the probate of the said will executed by Jiban Krishna Tapaswi. Later the said suit became contested and O.S. 18 of 1986 was started, on transfer of the said suit to the then 5th Court of Id. Addl. Dist. Judge Alipore the suit was renumbered as O.S. 8 of 1987

and it was decreed on contest and the D.W.1 filed the certified copies of the judgment and decree. It appears that the defendant of the said T.S. ~~103~~ 103 of 1986 Rabin Tapaswi preferred an appeal before the Hon'ble High Court and the same was dismissed on contest. The certified copy of the judgment of the Hon'ble High Court arising from O.S. 8 of 1987 pronounced on 25.9.1997

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*Abhrajit Ghosh*  
 Partner - 18 -

**B. S. GROUP**  
*Prasim Roy Chowdhury*  
 Partner

Is marked as exbt. D. The certified copy of the judgement of O.S. of 1967 passed by the then Id. 6th Addl. Dist. Judge Alipore dated 7.12.1969 is also marked as exbt. E. The certified copy of the decree of the same so furnished by the D.C. 1. Is marked as exbt. E/1. She has also furnished the probate of O.S. B of 1967 dated 30.5.1980 issued by then Id. 6th Addl. Dist. Judge, Alipore and the same is marked as exbt. F. Together with its stamp duty and the draft map of the Will tested by her father Jiben Krishna dated 16.7.1903 by which he had cancelled his previously tested Will dated 26.6.1900. D.C. 1. has also furnished and proved the assent of the Executor Ramesh Chandra Mukherjee to the legatees of the said Will of Jiben Krishna regarding the completion of legatees title to their ancestral property inherited by them from Jiben Krishna Tapanji as his successors in later st and the said document is marked as exbt. G. In I.S. 103 of 1996. Part apart. D.C. 1. has also proved the land records in respect of the properties in issue and the same are marked as exbts. I series. Besides this no other documents is proved from the side of D.C. 1. representing other defendants, as I have already mentioned.

So far as the defendant 2 Rabin Chandra is concerned he has deposed and filed from evidence although he has not



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*Sulanki Swarn*  
Partner

**B. S. GROUP**  
*Ranjan Roy Chowdhury*  
Partner

defendants no.4 to 7 as well as plaintiff.To support the conventionof the D.W.2. one Probat Roy Chowdhury as D.W.3, deposed and discharged.Besides, this P.W. and D.Ws none else depose in this suit.From the other depts of T.S.103 of 1986 as found from the amended plaint none furnished any document to get that exhibited Int.S.103 of 1986.

On the basis of all these,I shallnow scan the materials on record and depositions came to the decision with reasons. This has been forthcoming fromthe materials on record that admittedly Hiralal and Amritalal were the exclusive owners of the entire suit property as categorically reflected inthe Schedule of theplaint of T.S.103 of 1986, having equal  $\frac{1}{2}$  shares of thesame.

The plaintiffs side contended through P.W.1. that the total area of the suit property is 1.07 acre of land and this is coming fromthe sideof the plaintiff specifically that they have  $\frac{1}{4}$ th shareto the extent of 26% satak of land over there contained in Das Nos. 86 and 89, Khatian No,148 J.L.No.25 R.S.No.43 Touzi No.1-6 and 8-10, 12-16 at Mouza-East Barisinga.

To substantiate their claimof right,title interest and possession over their respective  $\frac{1}{4}$ th share in the suit



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 SUBIR ROY CHOWDHURY  
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- 20 -

Properties as described above the plaintiff has furnished exbt. 1 i.e. Sale Deed dated 9.3.1950 from where it transpires that at Khatian no. 148 J.L.No.23 of the same Mouza, Suit Dag No.86 consisted of 1.11 sataks of land and the suit Dag No.89 is a deba consisting of 10 sataks of area. So in that process the total suit property came to 1.21 acres/sataks of above referred Khatian number, J.L.Number, etc. It is the submission of the plaintiff that the same was purchased by the predecessor in interest of the plaintiff of T.S.103 of 1986 Sitanath. Plaintiff during the course of testimony of P.W.1. In the form of Kanupriya now substituted by the substituted respondents namely Sabita, Prabir and Subir Roy Chowdhury, reflected that since the brother of P.W.1 i.e. co-plaintiff. Chintamoni Roy Chowdhury s/o Lt Sitanath Roy Chowdhury, Chintamoni's wife Bithika are admittedly not alive, so the plaintiff Kanupriya now represented by the above referred substituting respondents had been contesting alone for him in the said title suit. He has further produced the Deed of Gift dated 11.7.1983 (exbt. 2) and from there it transpires that the plaintiff has on the strength of the said Exbt.2, executed in favour of the plaintiffs by the other successors in interest of Sitanath Roy Chowdhury got their share in the



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suit property gifted in their favour by their mother Pradumyaa Nalini Roy Chowdhury and sister namely, Manasa Rayya etc. Subsequently it is also produced by the plaintiff plaintiffs to show that over the properties in issue litigation cropped up in between the predecessor in interest of the plaintiff's side and others and F.S. 603 of 1952 was disposed of by a competent court of law and out of that decided F.S. 603 of 1952, a civil appeal was preferred. Plaintiff has also furnished exdt. 4 which was prepared regarding subdivision of some portions of the suit property. Plaintiff has furnished sale deed dated 1.3.1946 (exdt. 5) to substantiate that out of total 1.11 acres of suit property 14 sataks of land were sold by the successors in interest of Agrinidhal and Jibon Krishna, s/o Hiradhal to Jaganath K. Senanna by that sale deed and there, the plaintiff has contended basing on these documents that the total area of the suit property is 1.07 acs of land which came into existence of exdt. 5 and it is the specific submission of the plaintiff/respondent that the plaintiff's share was 1/4th share out of it.

The claim of D.D.M. in the process of conducting the proceedings in suit has been by the plaintiff above.



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- 22 -

reflected from the contents of the plaint case, focused in list in this judgement, remained practically unchallenged by the other debtors side save and except the present appellant/defdt side in the form of Sikha Tapaswi d/o Rabin Tapaswi who had passed away on 2.8.2003. It is pertinent to reflect here that Jayanti Tapaswi w/o Lt. Rabin Tapaswi is admittedly not alive. So the actual debt/appellant Sikha Tapaswi is practically challenging the impugned judgement of I.S.103 of 1986.

The meticulous observations of the materials on record reflected that the testimony of contesting debt. no.2 as D.W.2 of I.S.103 of 1986 Rabin Tapaswi has been claiming that Amritalal Tapaswi had 5 sons and one of whom was Kiran Tapaswi and it is the claim of the contesting debt. Rabin Tapaswi that one of the sons of Amritalal namely, Kishore Mohan was mentally retarded. Rabin further claimed that the sons of Amritalal, as specifically reflected in the plaint and written statement predeceased their mother Giribala. These contentions of Rabin were not found to have any authentic material supported by any lota of convincing evidence of any form from the end of Rabin Tapaswi at all. On the other hand the contents of exbt.2 and 7 series destroyed such claim -lly in the absence of any cogent evidence to the contrary.





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- 23 -

of defendant Rabin Tapaswi thoroughly. Rabin Tapaswi's challenge that the suit property consisted of more than 1.07 acres of land and those properties are not brought into the hotch pot of T.S.103 of 1986 is also not materialised from his end to any extent in the coming into existence of exbt. 5 besides exbt. 1 series.

D.W.1. representing herself as the defdt.no.6,4 and 3 Inl.S.103 of 1986 has produced and proved the exbts. D,E,E/1 and G respectively as described in this judgement and deposited in support of the same and in the absence of any cogent evidence of any form to the contrary, and in the absence of any better document to refute the contents of the above mentioned documents for challenging the authenticity of those exhibited documents. I fell inclined to hold that the defdt./appellant has no right, title interest and possession either in the suit property or in any portion of the suit property in which the plaintiff side has his own right, title, interest and possession according to their shares in it and for which only the plaintiff/respondent side is soliciting for effectuation of the partition by means and bounds.

The contents of exbts. 6, D, E, E/1 and G reveal categorically in the absence of any cogent evidence to the contrary,



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that there was no prior partition or any kind of effective oral partition of the plaintiffs share in the suit property in specific form. The claim of the deftdno.6 on this score gets frustrated exclusively on coming into existence of the above referred exhibited documents and convincing evidence to confute the contention of the deftdno.6 that there was previous partition of the suit properties in between Jiban Krishna, SitanathRoy Chowdhury and Kartick Nath or for that reason the plaintiff /respondent's side cannot pray for effectuating fresh partition of the plaintiffs share in the suit property.

The contention of the deftdno.2 that there cannot be execution of the Will in respect of undemarcated portion of the joint property remained and appeared to have no legal sustainability mainly on the coming into existence of the exhibits. D, E, E/1 and G and also because of the absence of any of cogent evidence in substantive form to appreciate his claim to have his share of his own in the undemarcated portion of the suit property. The claim of this deftd in particular to have privilege to preempt the suit property as agitated by him in the written statement, also fails since the above referred exhibited documents could not reflect anything to



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- 25 -

focus that the deftd no. 2 of T.S.103 of 1986 has any right, title interest and possession in specific sense to any estate in any portion of the suit property. Though the deftd. no. 2 has claimed that there was non joinder of necessary parties in the form of heirs of Kishorimohan etc. yet nothing legally appreciable has come to materialise his such argument as legal or tenable enough for its cogency or basis. The claim of the deftd. Rabin that one Nibarani Chakraborty has adverse possession in the suit property and on the demise of Nibarani his successors in interest should have been impleaded in this suit as necessary parties is also not supported by legally sustainable evidence. The contention of the deftd no. 2 that "Sabuj Sathi Club" has its contention in the suit property has not been vindicated by any iota of cogent evidence of any form.

So on consideration of all these I find that there was no non joinder of necessary parties to hold that there was no alleged reason the T.S.103 of 1986 is a failure.  
D.W.3 of T.S.103 of 1986 could not be by his testimony.

~~substantiate~~ substantiate Rabin Tapaswi's contention in any manner whatsoever. So far as the shares of Kartick Nath over



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- 26 -

the suit property is concerned, that has no clash with the plaintiff/respondent's share over there.

The defendants 12 to 14 had only filed written statements -t in the said title suit but none of them contested in the said title suit in any way.

The successors in interest of Kartick Nath were duly impleaded as defendants in T.S.103/1986 but they did not contest. The heirs of Sukumar Chakraborty, executor of the contents of the expts. E, E/1 and G i.e. Rama Shankar Mukherjee heirs of Parimal Malakar have been impleaded as defendants in the said title suit by the plaintiffs, but they also did not file written statement in the said title suit. Apart from the sons of Ajit Tapaswi, i.e. brother of Kesab, Rishikesh and Kishori Mohan have been impleaded as defendants. In the said title suit also. But from the case record, it transpires that they also did not contest in the said title suit by filing written statement.

The findings of the Id. court below on all these points lend no ground to be interfered and deserves appreciation.

However since the plaintiff/respondent has 5th share in respect of the 1.07 acre of suit property, so taking into consideration of expt. 5 from which it transpires that out of



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1.11 acres of land of the suit property, in suit dag No.86 as exbt. I(3) reveals. 14 sataks of land have been sold away by a Sale Deed dated 1.3.1948 (exbt.5), so the pirs/respds. have  $\frac{1}{4}$ th share on the total area of 1.07 acres of the suit property consisting in suit dags no.86 and 89 and on mathematical calculation, the same comes to the extent of  $26\frac{3}{4}$  sataks of land in the suit property and only that portion of land deserves to be partitioned by means and bounds in favour of the plaintiff/respondent. To that extent only the impugned judgement of T.S.103 of 1986 and its decree dated 17.7.2003 and 28.7.2003 respectively deserves interference.

Memo of appeal is correctly stamped.  
Hence, it is,

Ordered

that the instant title appeal be and the same is allowed in part on merit on contest in favour of the appellant/defendants 2 and 4 to 7 and ex-parte against the rest without costs.

It is decreed that the plaintiff/respondent has 26 $\frac{3}{4}$  sataks of land in the suit property. The impugned judgement of Title suit No.103 of 1986 dated 17.7.2003 is modified to



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that extent.

- 28 -

The plaintiff/respondent do get separate possession thereof to the extent of 26½ sataks of land in the suit propertyon partition by means and bounds. The parties are allowed time to the extent of 3(three) months from the date of this judgement to effectuate partition of the suit properties by ~~means~~<sup>meats</sup> and bounds amicably, failing which any of the party's will be at liberty to apply to the appropriate court of law for partition of the suit properties by means and bounds by appointment of a Pleader Commissioner.

The pleader commissioner, if and when appointed shall effectuate the partition of the suit property keeping in view the present possession of the parties compatibility of allotment and other equitable principles, as far as practicable. The parties will bear the cost of final decree

-The parties will bear the cost of final decree proportionately to their share. Let copy of this judgement be sent to the Id.court below for perusal and to proceed as per law, accordingly.

D/C by me,  
Sd/-S. Mitra, Addl. Dist. Judge,  
8th court, Allipore.

Sd/-S. Mitra, A.D.J.  
8th court, Allipore. 30.9.15

Typed by,

*S. Mitra*  
30.9.15

For further information, please refer to the  
copy and contact my subject.  
*Debabrat Basu*  
Comptroller  
Alipore  
Dist. Jdgr.  
Date: 2.12.13

Judges Copying Department  
READY ON  
2 - DEC 2013

District Judge & Court  
Alipore

Certified to  
This is a true and correct copy of the original.  
Copied by: [Signature]  
District Judge's Court,  
Alipore, Dist. Jdgr.  
Accepted on: 15 Nov. 10 1900

*A*  
*2480*  
*02/12/13*



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- 5 -

- 2. Stamp for power : Rs. 10.00
- 3. Service of process : Rs. 10.00
- 4. Pleaders fees on : Rs. 201.00
- 5. Other costs. : Rs. 101.00
- Total. Rs. 402.00

Respondent :-  
Stamp for power : Rs. 10.00  
do for petition : Rs. 80.00  
Pleader fees on : Rs. 201.00  
other costs. : Rs. 20.00  
Total Rs. 311.00

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).

Sd/-S.Mitra,  
Addl. Dist. Judge,  
8th court, Alipore,  
13.11.15.

Typed by,  
*[Signature]*  
2.11.15



Dist. J. Jee's Copying Department  
 Alipore  
 Date 21/11/13  
 Dis. Judge's Court  
 Comparing Case  
*Abhishek Das*

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 2 - DEC 2013  
 Alipore

(Case)  
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*21/11/13*  
*AM*

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 MANU CHATTERJEE

District Judge's Court  
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 South 24  
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