Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'be Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

F.A.T 48 of 2024
IA No: CAN 1 of 2024

Sri Arpan Narayan Pandit
Vs.
Ashit Narayan Pandit and others

For the appellant	:	Mr. Debdutta Basu Ms. Soumalika Nandan
For the respondent Nos.1 & 2	:	Mr. Dhrubojyoti Ghosh Mr. Somnath Maiti Mr. Soumyanil Maiti Mr. Radha Raman Karmakar
Heard on	:	16.07.2026 & 06.08.2026
Judgment on	:	06.08.2026

Sabyasachi Bhattacharyya, J.:-

1. The present challenge has been preferred against the dismissal of a partition suit filed by the plaintiff/appellant, on the ground that the same is not maintainable in view of the plaintiff/appellant having failed to prove the title of Asim

Narayan Pandit, the alleged original owner of the property, through whom all the parties claim their title.

2. Learned counsel for the appellant submits, by placing reliance on the relevant paragraphs of the plaint, particularly paragraph nos. 4 to 10 thereof, that the plaintiff clearly asserted the title of the ancestor Asim Narayan Pandit as well as the shares of the parties in the suit property in the averments made in the plaint.

3. In paragraph nos. 9, 13 and 14 of their written statement, it is submitted, the only contesting defendants, being defendant nos.1 and 2 (respondent nos.1 and 2 herein), virtually reiterated the plaint case as to title and shares of the parties.

4. Again, in paragraph no. 15 of the written statement, the averments made in paragraph nos. 3 to 10 of the plaint were merely referred to as matters of record, without any denial.

5. Thus, in view of the clear admission as to title of the parties as well as to the plaint case that the title was derived originally from Asim Narayan Pandit, it is argued that the learned Trial Judge erred in law and in fact in dismissing the suit on the ground that Asim Narayan Pandit's title was not proved.

6. Learned counsel for the plaintiff/appellant also relies on several circumstantial documents to establish the title of Asim Narayan Pandit, primarily being in the nature of property tax receipts

deposited in respect of the suit property in the name Asim Narayan Pandit with the concerned municipal authority.

7. On the query of the court as to how far the court, sitting in judgment over a partition suit, can look into the question of collusion, learned counsel for the appellant cites *Pradip Chowdhury and others vs. Dilip Chowdhury*, reported at *2022(4) CHN 262*, where, under similar circumstances, upon the trial court dismissing the suit on the ground that title was not proved, a coordinate Bench of this court had resorted to the provisions of Order X, Order XV Rule 1 and Order XII Rule 6 of the Code of Civil Procedure.

8. The coordinate Bench was pleased to observe in the said judgment, *inter alia,* that where the allegations in the plaint are not denied or are admitted, no contentious issue arises for adjudication in the suit. Under such circumstances, taking into account Order XV of the Code, the court may at once pronounce judgment. Even under Order XII Rule 6, it was held, which could be pressed into service, the court can pass a judgment on admission.

9. Learned counsel next cites *Rup Chand Gupta vs. Raghuvanshi Private Limited and another*, reported at *1964 SCR 760*, where the concept of collusion in judicial proceedings was elaborated

as a secret arrangement between two persons that the one should institute a suit against the other in order to obtain the decision of a judicial tribunal for some sinister purpose.

10. It is argued that in the present case, there cannot be any sinister or dishonest purpose to taint the suit as collusive.

11. Learned counsel further cites *Nagubai Ammal and others vs. B. Shama Rao and others*, reported at *AIR 1956 SC 593*, for a similar proposition, where the Hon'ble Supreme Court went on to observe that in a collusive proceeding, the claim put forward is fictitious, the contest over it is unreal, and the decree passed therein is a mere mask having the similitude of a judicial determination and worn by the parties with the object of confounding third parties.

12. In the present case, no such element is present and in view of the clear-cut admission of the contesting defendants, it is submitted that the learned Trial Judge ought to have decided the suit on merits to hold that title of Asim Narayan Pandit was proved by admission of the contesting defendants.

13. Learned counsel appearing for the defendants/respondent nos.1 and 2 places reliance on the evidence adduced by the defendant no.1 and argues that certain allegations were made against the

defendant nos.1 and 2 which were controverted in the examination-in-chief of DW1, the respondent no.1 herein.

14. In the absence of any counter suggestion on such issues, it is submitted that the said evidence should be accepted as true.

15. Learned counsel also expresses some apprehension as to interference by third parties, since allegedly the plaintiff has inducted a tenant in a portion of the suit premises.

16. Learned counsel for the respondent nos.1 and 2 cites *Shub Karan Bubna @ Shub Karan Prasad Bubna vs. Sita Saran Bubna and others*, reported at *AIR 2009 SC (Supp) 2863*, for the proposition that in a partition suit, three issues are involved - whether the person seeking division has a share or interest in the suit property/properties, whether he is entitled to the relief of division and separate possession, and how and in what manner the property/properties should be divided by metes and bounds.

17. Learned counsel places reliance on the third aspect of the matter and stresses that the plaintiff cannot by allotted more than his share or a better portion of the suit property and/or to enter into any arrangement with a promoter or a third party.

18. Upon hearing learned counsel for the parties, we find that the learned Trial Judge dismissed the suit on the sole premise that

the title of the patriarch of the family, the original owner Asim Narayan Pandit, was never proved by any title deed.

19. We take note of the fact that as per the plaint averment, the title of Asim Narayan Pandit was derived from a purchase deed of the year 1956.

20. A document so old may reasonably be construed to be difficult to trace out.

21. That apart, insofar as the circumstantial evidence of title of Asim Narayan Pandit is concerned, we find that several materials, including property tax bills and other tax receipts paid to the municipal authorities in the name of the said Asim Narayan Pandit, to which a presumption of correctness is attached, were marked as Exhibits in the suit, which have never been rebutted in the present case.

22. Insofar as collusion is concerned, as elaborated in *Nagubai Ammal* (supra), there has to be an element of an object of confounding third parties, over which a sham dispute is raised, in order to brand a litigation collusive.

23. In the present case, the judgment which would ultimately be passed would be *in personam*, not affecting the rights and interests of third parties. Thus, there cannot arise any question of confounding third parties.

24. In *Rup Chand Gupta's* case, the ingredient of a sinister motive or a dishonest purpose which is intended to be achieved was stressed, for a litigation to be labelled as collusive. We also do not find any such motive or purpose involved in the present case to brand the suit as collusive.

25. In the absence of any collusion, from a plain reading of the averments of the only contesting defendants (1 and 2) in their written statement, it is clear that insofar as the title and the shares of the parties are concerned, there is no denial to the plaint case at all.

26. The ingredients of a partition suit, as highlighted by learned counsel for the respondent nos.1 and 2, have no bearing on the present adjudication, since the learned Trial Judge did not enter into the merits of the case or advert to the evidence at all but merely dismissed the suit on the ground of title of the original owner not being established.

27. Since, within the contemplation of Order XII Rule 6 of the Code of Civil Procedure as well as Order XV thereof, if there is a clear admission on the cardinal aspects of a matter, the court may even pass a judgment on admission or proceed to decide the suit in the affirmative, in the absence of any contention between the parties, there could not be any impediment on the learned Trial

Judge to proceed on the basis of the circumstantial evidence of the property tax receipts, etc. and to come to a conclusion that Asim Narayan Pandit had title to the property, which is an undisputed position insofar as the defendants are concerned, and thereafter to decide the suit on merits in accordance with the said observation.

28. Learned counsel for the appellant further submits that within the contemplation of Order XLI Rule 24 of the Code, since the evidence before the court is sufficient, this court itself may very well decree the suit in its preliminary form instead of remanding the matter.

29. However, we are unable to accept such proposition for the simple reason that although there are substantial materials on record, there has been no adjudication on merits on any of the other issues than the issue of title of the predecessor-in-interest of the parties and as such, if this court proceeds in first appeal to decide the suit, it would be arrogating to this court the task of the first court, robbing both parties of the opportunity of a further appellate challenge, if aggrieved.

30. Hence, we choose not to usurp one forum for the parties.

31. Even otherwise, without a first adjudication by the suit court on the qualitative value of the evidence and on the issues involved,

the First Appellate Court ought not, in our opinion, to take up the cudgel on behalf of the parties and proceed to adjudicate on the merits of the suit where the trial Court has not undertaken such exercise at all in the first place.

32. Whether the evidence on record is sufficient to decide all the issues has to be first adjudicated by the first forum before an appellate court even looks into the matter.

33. Moreover, there are certain creases which are to be ironed out prior to coming to the conclusion that the plaint case has been conclusively proved.

34. For example, we do not find on record any document to substantiate the plaint case that a deed of gift was executed in favour of the defendant no.5.

35. As rightly pointed out by learned counsel for the respondent nos.1 and 2, the extent of the property or roof rights transferred to the defendant no.5 is not clear before the court.

36. Hence, we cannot also clearly say that the evidence on record, at this stage, is sufficient to decide the suit on merits, thereby invoking Order XLI Rule 24 of the Code of Civil Procedure.

37. Be that as it may, instead of pre-judging such issues, the purpose of justice would be sub-served if the matter is sent back

to the trial court for a fresh adjudication on all remaining issues.

38. Accordingly, FAT 48 of 2024 is allowed on contest, thereby setting aside the impugned judgment and decree dated January 29, 2024 passed by the learned Civil Judge, Senior Division 4th court at Alipore, District-South 24 Parganas in Title Suit No.161 of 2019 with the observation that the title of Amiya Narayan Pandit and, through him, the parties to the present suit, has been sufficiently proved by the plaintiff/appellant, directing the learned Trial Judge to hear the suit afresh, upon giving opportunity to both parties to lead fresh evidence, if they so intend, and thereafter to decide the suit on merits on the other issues than the issue of maintainability on the ground of establishment of title of the original owner Asim Narayan Pandit.

39. It is made clear that apart from the same, we have not expressed our opinion on the other issues involved in the suit and it will be open to the learned Trial Judge to independently proceed to adjudicate those in accordance with law.

40. Interim orders, if any, stand vacated.

41. There will be no order as to costs.

42. Urgent photostat certified copies of this judgment, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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