
(2016) 12 CAL CK 0006
In the Calcutta High Court
Case No : CS No. 540 of 1988

Sandhya Basu Mallick

APPELLANT

Vs

Sri Pramatha Nath Sen

RESPONDENT

Date of Decision : 15-12-2016

Acts Referred:

Hindu Succession Act, 1956 — Section 8, Section 9
Transfer of Property Act, 1882 — Section 123

Citation : (2017) 1 CalLT 489 : (2017) 1 ICC 849

Hon'ble Judges : Shivakant Prasad, J.

Bench : Single Bench

Advocate : Mr. Sudip Deb, Mr. Sunil Kumar Chakraborty and Mr. Shiladitya Barma, Advocates, for the Plaintiffs; Mr. D.C. Thakur and Mr. A.K. Mukhopadhyay, Advocates, for the Defendant

Final Decision : Allowed

Judgement

Shivakant Prasad, J.—This is a suit for partition.

2. Plaintiffs' case in brief is that on 13th May, 1983 the father of the plaintiffs and the defendants Manmatha Nath Sen died intestate, leaving behind the plaintiffs and the defendant no. 2 as his daughters and the defendant no. 1 as his only son who was governed by Dayabhaga School of Hindu law. Smt. Kamal Rabi Sen had predeceased her husband Manmatha Nath Sen.

3. Late Manmatha Nath Sen was the absolute owner of the immovable properties described in Annexure "A" and movable properties held and possessed by him and described in Annexure "B" to Annexure "E" of the plaint.

4. According to plaintiffs, the defendant no. 1 is holding all the immovable and movable properties described in Annexure- "A", "B" to "E" and all the relevant original title deeds papers and documents in respect of the said properties are lying in the custody of the defendant no.1.

5. According to the provisions of Hindu Succession Act, 1956 each of the

plaintiffs and the defendants is entitled to get undivided 7th share both in immovable and movable properties left behind by their deceased father.

6. On the basis of arrangement, the defendant no.1, was realising rents from the tenants of the properties described as serial nos. 2 to 4 of Annexure "A" and used to furnish accounts of the income and expenditure, but since 1985-86 accounting year, the defendant no. 1 failed and neglected to furnish any accounts in spite of repeated requests and has not paid Corporation Tax in respect of the said properties.

7. The plaintiffs repeatedly requested the defendant no. 1 to furnish the particulars of such contingent liability as also the joint accounts, bonds, securities etc. standing in the joint name, but the defendant no. 1 refused to furnish particulars of the same.

Hence, the suit.

8. The defendant no. 1 has contested the suit by filing a written statement and contended inter alia, that after the death of their father the plaintiffs, and the defendants by mutual consent appointed Sri Jitendra Mohan Auddy of No. 14, Bidhan Sarani, Calcutta, a registered Valuer, for the purpose of making valuation and distribution of the jewellerys and ornaments belonging to the estate of their father amongst them and the Valuer made valuation of all the jewellerys and ornaments belonging to the estate of their late father and divided the said jewellerys and ornaments amongst the plaintiffs, this defendant and the defendant no. 2 equally, that is to say, 7th share each, and such distribution of the said jewellerys and ornaments in the ratio as recorded in a document dated 31st May, 1987. The plaintiffs deliberately suppressed the facts as recorded in Annexure "B" and "C" to this written statement relating to distribution of jewellerys and ornaments. It is significant that the plaintiffs after distribution of the jewellerys and ornaments have again made a claim of the same as stated in annexure "D" to the plaint.

9. Defendant's specific case is that prior to death of Manmatha Nath Sen, the father of the parties, by a document dated 15th April, 1983 made a gift by way of donatio mortis causa to this defendant in respect of the joint fixed deposits, Savings Bank Account, National Savings Certificates VI issue and also for gold coins.

10. It is well within the knowledge of the plaintiffs that in the extra ordinary suit No. 4 of 1935 in respect of which the said deceased was a party, the Commissioner of Partition appointed by this Hon"ble Court never allotted the item no. 1 in Annexure "A" to the plaint to the said deceased.

11. With regard to premises no. 9, Duff Street, Calcutta, being item no. 2 in Annexure "A" to the plaint this defendant stated that the area of the said property is about 1 Cottah 10 Chittacks and the said property has long been let out to two tenants yielding an income of Rs. 205/- per month. The plaintiffs have

also suppressed the facts that the said property is charged against compensation money for Ariadaha property acquired by the Government and the Title Deed in respect of the said property is lying with Alipore Land Acquisition Collector Officer as and by way of security and an appeal has been preferred against the order of the Land Acquisition Collector being FA no. 296 of 1976 pending in this Hon''ble Court.

12. With regard to vacant land at premises no. 1E, Haripal Lane, Calcutta-6, being item no. 3 in Annexure "A" to the plaint, the defendant no.1 contended that the said premises consisting of about 4 Cottahs 6 Chittacks forms part of premises no. 33, Ram Mohan Saha Lane and the said property during the life time of their deceased father was partitioned in between the said deceased and his brothers and the portion allotted to their deceased father was renumbered as 1E, Haripal Lane, Calcutta-6. It is not known to this defendant as to with whom the title deed in respect of the said property being premises no. 33, Ram Mohan Saha, Calcutta is now lying. It is also submitted that the parties to the suit have entered into an agreement for sale of the said property with Dr. Ashim Chandra Roy of No. 58C, Bechu Chatterjee Street, Calcutta-9 in respect of the said premises no. 1E, Haripal Lane, Calcutta-6 and they have received a sum of Rs. 2,00,000/- as advance for payment of the estate duty and other expenses and for the upkeep and maintenance of the estate left by their deceased father and the money received as advance is lying in a Savings Bank Account No. 10253 at the Bank of India, Chowringhee Square Branch and could be operated jointly by all the parties to the suit.

13. With regard to premises no. 8/1, Duff Street, Calcutta-6, the plaintiffs have completely suppressed in the plaint that the said property have been leased out to the plaintiff no. 1 with one Doctor Aloke Ranjan Bose for a term of 51 years at a rent of Rs. 1,000/- per month payable according to English calendar month. The said property is also charged against the compensation money received by the said deceased for Ariadaha property acquired by the Government and the Title Deeds in respect of the said property is lying with the Land Acquisition Collector, Alipore as and by way of security.

14. The defendant states that the parties to the present suit have full knowledge that Shri Manmatha Nath Sen, since deceased, out of his paternal properties inherited 7th share of undivided "Sripanch (Panna)" and the said Sripanch is still lying in custody of the State Bank of India, Calcutta Main Branch under the Commissioner of partition appointed in the Extra Ordinary Suit no. 4 of 1935 and the said suit and proceedings arising thereunder are still pending in this Hon''ble Court.

Accordingly, the defendant no. 1 has prayed for dismissal of the suit with costs.

15. On perusal of the pleadings and upon hearing learned Counsel for the parties, the following issues are framed:

1. Is the suit maintainable in its present form and prayer?

2. Whether all the properties of the co-sharers have been brought into one hotchpotch?
3. Whether all the co-sharers are made parties?
4. Whether all the necessary parties have been made parties to the suit?
5. Are the plaintiffs entitled to have one-fourth share each in respect of the suit premises mentioned in Annexure-A to E of the plaint?
6. Was there any previous partition between the parties in respect of the selfsame properties?
7. Was the alleged deed of gift dated 15th April, 1983 made in favour of the defendant no. 1 by his deceased father late Manmatha Nath Sen lawfully executed and duly registered?
8. Is the defendant no. 1 under an obligation to furnish the accounts of the income and expenditure of the Court-fees mentioned in Serial no. 2 to 4 of Annexure-A since 1985-86?
9. Did the defendant no. 1 hold a trust for and on behalf of the plaintiffs the gold coins (mohars), ornaments, fixtures, utensils, fixed deposits, money etc., belonged to the estate of late Manmatha Nath Sen as described in Annexure-C to E of the plaint?

16. Issue no. 3 & 4:

Both issues are interlinked hence, taken up together. In paragraph 1 of the plaint plaintiffs have narrated the relationship between the parties which would appear from the genealogical table set out as under:

17. Admittedly, plaintiffs and the defendant no. 2 are three daughters and defendant no. 1 is the only son of deceased Manmatha Nath Sen who died intestate on 13th May, 1983 leaving behind the parties to the suit as their heirs who was governed by Dayabhaga School of Hindu Law. Smt. Kamal Rani Sen, the wife of said Manmatha Nath Sen had predeceased her husband.

18. It is the position of law, the property of a Hindu male dying intestate is distributed among heirs in accordance with the law as per provision of Sections 8 & 9 of the Hindu Succession Act, 1956 and the Rules embodied under Section 10 of the Act which lays down that the property of an intestate shall devolve among the heirs in Class-1 of the schedule as per Rule 2 which provides that the surviving sons and daughters and mother of the intestate shall each take one share. Therefore, as per the plaint case admittedly the parties to the suit being the surviving son and daughters are entitled to share in the property of their father Manmatha Nath Sen since deceased in respect of all property left by him and to be distributed amongst them having each one share.

19. Thus, I hold the above issues in favour of the plaintiffs and further hold that all the co-sharers being the necessary parties have been impleaded in this suit

for partition.

Issue nos. 1, 2, 5, 6, 7, 8 & 9:

20. All the above issues are taken up together for the sake of convenience in discussion and brevity. The plaintiff has prayed for partition of the suit properties by metes and bound amongst the plaintiffs and the defendants. The plaintiffs have claimed the decree of partition in respect of house properties listed below:

(i) The land comprised in Holding no. 30, Shree Gopal Mullick Road, Ariadaha, Kamarhati, P.S. Baranagar, North 24-Parganas, West Bengal, measuring more or less 12 Cottahs; (ii) Premises-9, Duff Street, Calcutta-6, being a two storied Building measuring more or less 109.23 sq. Meters. Present value Rs. 10,00,000/- (approx); (iii) Vacant land measuring more or less 281-80 sq. Meter. being premises no. 1E, Haripal Lane, Calcutta-6, Present value Rs. 4,00,000/- (approx); (iv) Premises no. 8/1, Duff Street, Calcutta-6, being a two storied building measuring more or less 152.70 sq. Mtr. Present value Rs. 12,00,000/- (approx).

21. It is admitted by both the parties to the suit that the property in Sl. no. 3 as noted above being 1E, Haripal Lane, Calcutta-6 has been sold. Obviously there is suppression of this fact in the plaint.

22. Learned Advocate for the defendant no. 1 has pointed out that the said property situated at 1E, Haripal Lane, Calcutta-6 has been sold out to A. K. Pal, the maternal uncle of Bani Das, defendant no. 2 before the institution of this suit by the plaintiffs. Therefore, this property in Sl. no. 3 is beyond the scope of partition

23. Learned Advocate for the plaintiffs submitted that out of the three properties which required to be partitioned is one in respect of the property situated at 8/1, Duff Street, Calcutta-6, in respect of which the plaintiff no. 1 was inducted as lessee by his late father Manmatha Nath Sen in the year 1982 at a monthly rental of Rs. 1,000/-, which the plaintiff no. 1 deposited till 1998 in the joint account operated by the three daughters and their father late Manmatha Nath Sen. It is submitted that the defendant no. 1 has withdrawn money from the said account without any information to the plaintiffs and so the plaintiff no. 1 stopped payment of rent and is now willing to pay all arrear rent since it has not been paid.

24. The above statement of the plaintiffs has not been proved on evidence. The fact remains that plaintiff no. 1 has been and is enjoying the property at Premises no. 8/1, Duff Street, Calcutta-6 as a lessee therein and has been running "Care and Cure Nursing Home" which was a partnership firm consisting of late Dr. A. R. Bose, Gynaecology and the plaintiff no. 1 herself, and the tenanted premises situated at 8/1, Duff Street, Calcutta-6 fetching the rental being not more than Rs. 205/- rent only property. This property is requested to be partitioned amongst the parties, it is submitted on behalf of the defendant no.

1 that because of sale of property at No. 1E, Haripal Lane, Calcutta-6 and the property situated at one Ariadaha now being under the continuous possession of the Receiver appointed by the Hon"ble Court in EOS No. 4 of 1935 resulting into the nil position.

25. At Premises No. 9, Duff Street, Calcutta-6, there is two storeyed building measuring more or less 109.23 sq. Meters as mentioned in Sl. no. 2 in the Annexure-"A" of the plaint. These submissions are not in dispute.

26. Therefore, the plaintiffs and the defendants have 7th equal share each in respect of Premises No. 8/1, Duff Street, Calcutta-6 and Premises No. 9, Duff Street, Calcutta-6 as mentioned in item no. 2 and 4 of the schedule of house property vide Annexure-"A" to the plaint.

27. Properties mentioned in Annexure-"B" to the plaint are Government Securities/Fixed Deposits/Shares/Savings and Current Account, as regards movable properties the plaintiffs' claim 7th share each and so also in the movables as described in the Annexure-"D" of the plaint.

28. It is submitted on behalf of the plaintiffs that the Sl. No. 1 to Annexure-"D" is the property being "Sripanch" which was sold pursuant to the order of the Hon"ble Court but all other properties described in Annexure-"B" to "E" are claimed for partition in four equal shares.

Learned Advocate for the plaintiff has adverted to alleged Deed of Gift being Exbt.-3 and submitted that on bare looking at the said document, it would appear that the same is a forged document. It reveals that the said document Exbt.-3 mentioned the sentence (these gifts take effect on my death). It is admitted that the said Manmatha Nath Sen died on 13.5.1983. Therefore, the money lying jointly in Fixed Deposits & Savings Bank Account with different Branch on "either or survivor" basis and deposits in CDS Account lying at the Allahabad Bank, South Calcutta Branch and accumulated balance in NSC VI issue lying at Kalighat P.O., for the benefit of grandsons and the gold coins declared in the Gold Control return, to be held by the defendant absolutely and forever. This was written on 15.4.1983 and the same was accepted. According to learned Advocate for the plaintiffs, this cannot be construed as a gift by way of declaration as the articles must have come into hands of donee on their delivery and as such there was no gift in respect of Schedule-"B" to "E".

29. I am of the view that the article mentioned in the document Exbt.-3 wherein the deceased father Manmatha Nath Sen expressed his wish with regard to his movable properties being the money lying in the aforesaid accounts. The accounts are all on "either or survivor" basis so obviously the defendant No. 1 had accepted the same and they were all in possession of defendant no. 1. Therefore, it cannot be said that the articles under the said gifts were not delivered to the donee.

30. It is further submitted on behalf of the plaintiffs that the said document is a

forged one and the signature of Manmatha Nath Sen is also not his signature as the admitted signature appearing in the Lease Deed vide Exbt.- "A". It is also submitted that the alleged gift ought to have been registered and urged that the signature on the Exbt.-3 is forged signature of the deceased Manmatha Nath Sen. I am of the considered view that by mere comparison of the signature on Exbt.-3 with that of signature on the lease deed Exbt.-A, it cannot be held that the signature in Exbt.-3 is a forged signature of the deceased Manmatha Nath Sen. Burden to prove that signature is a forged on the Exbt.-3, it is for the plaintiff to have taken steps for examination of the document by a Questioned document Examiner.

31. Learned Advocate for the defendant no. 1 submitted that the document being the Gift in favour of the present defendant executed on April 15, 1983 is in respect of movable property of which the defendant is in possession.

32. On reading of the said document Exbt.-3 it reflects that late Manmatha Nath Sen expressed his desire in clear crystal term that the movables viz. Gold Coin, Fixed Deposits, Accounts operated on "either survivor" basis, NSC would vest in his son the present defendant and his grandson. The said movable properties were inherited as well as acquired properties of the donor who was aged about 68 years in his sound mind, had chosen by a written document to convey his such movable properties to his surviving son defendant no. 1. Learned Advocate for the defendant no. 1 has referred to a decision in case of Krushanadas Nagindas Bhate v. Bhagwandas Ranchhoddas and Ors. reported in AIR 1976 Bombay, 153 and submitted that the gift made and executed by late Manmatha Nath Sen in respect of his movable property in favour of the defendant no. 1 is not required to be a registered instrument of transfer.

33. It has been observed in paragraph 23 of the cited decision that under Section 123 of the T.P. Act, for purposes of making a gift of movable property, the transfer may be effected, whether by a registered instrument signed or by delivery. The document does not purport to be an instrument of transfer. It is in the nature of a letter acknowledging an oral gift. Hence, it was not required to be registered. I do agree with the submission of learned Advocate for the defendant no. 1 that such gift implicitly contains in itself the instruction of the deceased author and on the different Banks, Post Offices to accept the present defendant donee as the absolute owner of the fixed deposits, NSC's, opened on "either or survivor" basis in the joint names of both Late Sen and the defendant no. 1. On April 15, 1983, the movable assets were delivered and transferred as "gifts" to the defendant no. 1 and as such accepted though there was no witness which is not legally required in view of the specific provision of Section 123 of the T.P. Act. It would not be out of the context to mention that the provision under Section 123 of the T.P. Act enjoins two modes for the purpose of making of the gift over the immovable properties and the movable properties. In so far as the immovable properties are concerned, registration and the attestation by two or more witnesses are must mandating any donor to follow such bounden legal

procedure whereas the registration of gift in respect of the movable property is not required. The provision embodies that for the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery. Such delivery may be made in the same way as goods sold may be delivered." The words may used in the second part and the third part of the provisions are interpreted bearing in mind the legislative intent. In the second part and the third part of Section 123 of T.P. Act if construed, four kinds of transfer clearly emerge (a) registration, (b) simple transfer through a piece of paper or a letter which none can call sham or nominal document if he perceives properly, (c) delivery and (d) non-delivery. This is how the Hon"ble Apex Court has expressed in the case of Renikuntla Rajamma (D) By Lr v. K.Sarwanamma reported in 2014(9) SCC 445.

34. It would be profitable to reproduce the observation made in paragraph 10 and 11 of the cited decision.

"10. Section 123 regulates mode of making a gift and, inter alia, provides that a gift of immovable property must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. In the case of movable property, transfer either by a registered instrument signed as aforesaid or by delivery is valid under Section 123. Section 123 may at this stage be gainfully extracted:

"123. Transfer how effected - For the making of a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered."

11. Sections 124 to 129 which are the remaining provisions that comprise Chapter VII deal with matters like gift of existing and future property, gift made to several persons of whom one does not accept, suspension and revocation of a gift, and onerous gifts including effect of non-acceptance by the donee of any obligation arising thereunder. These provisions do not concern us for the present. All that is important for the disposal of the case at hand is a careful reading of Section 123 (supra) which leaves no manner of doubt that a gift of immovable property can be made by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. When read with Section 122 of the Act, a gift made by a registered instrument duly signed by or on behalf of the donor and attested by at least two witnesses is valid, if the same is accepted by or on behalf of the donee. That such acceptance must be given during the life time of the donor and while he is still capable of giving is evident from a plain reading of Section 122 of the Act. A conjoint reading of Sections 122 and 123 of the Act makes it abundantly clear that "transfer of possession" of the property covered by the registered instrument of the gift duly signed by the donor and

attested as required is not a sine qua non for the making of a valid gift under the provisions of Transfer of Property Act, 1882. Judicial pronouncements as to the true and correct interpretation of Section 123 of the T.P. Act have for a fairly long period held that Section 123 of the Act supersedes the rule of Hindu Law if there was any making delivery of possession an essential condition for the completion of a valid gift. A full bench comprising five Hon"ble Judges of the High Court of Allahabad has in *Lallu Singh v. Gur Narain and Ors.* AIR 1922 All. 467 referred to several such decisions in which the provisions of Section 123 have been interpreted to be overruling the Hindu Law requirement of delivery of possession as a condition for making of a valid gift. This is evident from the following passage from the above decision where the High Court repelled in no uncertain terms the contention that Section 123 of the T.P. Act merely added one more requirement of law namely attestation and registration of a gift deed to what was already enjoined by the Hindu Law and that Section 123 did not mean that where there was a registered instrument duly signed and attested, other requirements of Hindu Law stood dispensed with:

"7. Dr. Katju, on behalf of the appellant, has strongly contended that by Section 123 it was merely intended to add one more requirement of law, namely, that of attestation and registration, to those enjoined by the Hindu Law, and that the Section did not mean that where there was a registered document duly signed and attested, all the other requirements of Hindu Law were dispensed with. Section 123 has, however, been interpreted by all the High Courts continuously for a very long period in the way first indicated, and there is now a uniform consensus of opinion that the effect of Section 123 is to supersede the rule of Hindu Law, if there was any, for making the delivery of possession absolutely essential for the completion of the gift. We may only refer to a few cases for the sake of reference, *Dharmodas v. Nistarini Dasi* (1887) 14 Cal. 446, *Ballbhadra v. Bhowani* (1907) 34 Cal. 853, *Alabi Koya v. Mussa Koya* (1901) 24 Mad. 513, *Mudhav Rao Moreshvar v. Kashi Bai* (1909) 34 Bom. 287, *Manbhari v. Naunidh* (1881) 4 All. 40, *Balmakund v. Bhagwandas* (1894) 16 All. 185, and *Phulchand v. Lakkhu* (1903) 25 All. 358. Where the terms of a Statute or Ordinance are clear, then even a long and uniform course of judicial interpretation of it may be overruled, if it is contrary to the clear meaning of the enactment but where such is not the case, then it is our duty to accept the interpretation so often and so long put upon the Statute by the Courts, and not to disturb those decisions, vide the remarks of their Lordships decisions, of the Privy Council in the case of *Tricomdas Cooverji Bhoja v. Sri Sri Gopinath Thakur* AIR 1916 P.C. 182. We are, therefore, clearly of opinion that it must now be accepted that the provisions of Section 123 do away with the necessity for the delivery of possession, even if it was required by the strict Hindu Law."

35. Having respectfully gone through the above cited decision, it appears that during the life time of the donor, such gift in respect of the movable properties and acceptance of the same by the defendant no. 1 is a clear case of gift in the context of the factual aspect of the case.

36. As regards movable properties vide Annexure-D to the plaint. Learned Advocate for the plaintiffs refers to reports of the Valuer being Exbt. 1 and 2 that in Exbt.-A the plaintiff no. 1 had signed but it would not appear from the said document in Exbt.-A that she had actually accepted jewellery mentioned in the valuation report. The other valuation report Exbt.-2 reflects that the same has been written in the writing pad of the plaintiff no. 1 and had used the word "obtained" and before the word "obtained" the "grams of jewellery" have also been mentioned. On bare reading, it would appear that what valuer valued and the grams of jewellery found therein had been mentioned by the plaintiff no. 1. Otherwise, the plaintiff no. 1 would have said that she had actually received the jewellery and the name of the jewellery would also have been mentioned. Normally when the distribution of jewellery is made, always that party signs and writes the ornaments or the name of jewellery which they have received, otherwise the disputes would never have come to an end. Accordingly, it is submitted that after valuation of the jewellery the said Valuer had distributed the jewellery to the plaintiff no. 1 or the plaintiff no. 2 cannot be accepted.

37. Learned Advocate for the plaintiffs advert to the evidence of plaintiff no. 1 to answers to the question nos. 27 to 29, 35 to 40, 79 to 81, 84 to 93 and 100 to 109 and answers given by the defendant no. 1 is required to be considered. The evidence of defendant no. 1 is also important and particularly the answers given to question nos. 31, 60, 80 to 86 by the defendant no. 1.

38. It is further pointed out that from the two reports of the Special Officers being DD-20 and DD-21 appearing at pages 109 to 115 of the Judge's Brief of Document prepared by the defendant no. 1 that the defendant no. 1 had stated that he had taken possession of all the jewellery, movable and those are in his possession. The defendant no. 1 had also said that he had taken possession of those jewellery on the strength of the said alleged deed of gift. Therefore, it is an admitted position that jewellery and the other movables are at present lying in the custody of the defendant no. 1. He had also said that the jewellery have also been distributed by the said Valuer, but it would not appear from the report of the Valuer that the plaintiff no.1, in fact, has taken possession of the jewellery and therefore, the defendant no. 1 is under an obligation to handover and distribute the jewellery to all the parties herein by ?th share each.

39. In this context learned Advocate for the defendant no.1 submitted that as per (1) Chambers 21st Century Dictionary, "Obtain"- verb meaning is to get something, to become the owner, or come into possession something, after by effort or planning; to gain something, (2) Concise Oxford English Dictionary the meaning of word "Obtain-verb/acquire or secure. In paragraph 7 of the plaint plaintiffs have stated that on 4th June, 1988 the plaintiffs had visited the chamber of Shri A.K. Pal, the legal consultant for amicable settlement of all the four immovable properties and the movable assets. But the affidavit affirmed by Shri Pal reflects that Shri Pal, the deponent had found no contentious issue in respect of the jewellery and the gifted movable items.

40. Thus, it is submitted on behalf of the defendant no.1 that on 4th June, 1988, the distribution of the jewelleries was made to full satisfaction of the parties. As such, the plaintiff's claim is false in respect of partition for jewelleries and utensils which were already distributed to the plaintiffs and this fact would be evident from the minutes prepared on 4th March, 1989 by Smt. Mitali Bhattacharjee, the learned Advocate appointed on 29th November, 1988 by the Hon'ble Court as the "Special Officer", to make the inventory mentioned in Annexure-"A", "B", "C" and "D" to the petition. Such minutes were prepared on the above day; and in the presence of all the contending parties including Smt. Sandhya Basu Mallick, the plaintiff and her learned Advocate.

41. I am unable to accept such an argument of learned Advocate for the defendant no. 1 because in this case, there is no report of the said Special Officer produced before the Court to ascertain as to whether after inventory the jewelleries were distributed amongst the parties to the suit. As the law demands that the property of a Hindu male dying intestate is distributed amongst heirs in accordance with the provision aforesaid under Hindu Succession Act, 1956, this Court finally holds having regard to the documents-on-record that the parties have ½th share each in respect of the immovable properties left by their deceased father Manmatha Nath Sen being house properties at No. 8/1, Duff Street, Calcutta-6 and at No.- 9, Duff Street, Calcutta-6 as mentioned in the list of properties in Annexure-"A" to the plaint and movable properties being jewelleries mentioned in Annexure-"D".

42. In the context of the above discussion and findings, aforesaid issues are decided accordingly.

Hence,

Ordered,

that CS No. 540 of 1988 is hereby decreed in preliminary form in part on contest against defendant no. 1 and ex parte against defendant no. 2. It is declared that the plaintiffs and defendants have ½th share each in the suit properties in Annexure-"A" and Annexure-"D" to the plaint as discussed herein above. Ergo, the parties to the suit are allowed two months time to effect amicable partition failing which any of the parties shall be at liberty to put the decree into execution for final decree in terms of this preliminary decree by appointment of Commissioner for partition who will effect partition by metes and bound bearing in mind the present possession and enjoyment of the properties by the respective parties on adhering to the principle of equity and good conscience.

43. The parties to the suit shall bear proportionate costs in the suit.