
(2002) 03 CAL CK 0021
In the Calcutta High Court
Case No : S.A. No. 280 of 1999

Sri Sankar Ghosh and Others

APPELLANT

Vs

Sri Rakshit Kumar Ghosh and Others

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, 100
Transfer of Property Act, 1882 — Section 44

Citation : (2002) 2 CALLT 147 : (2003) 2 CivCC 523

Hon'ble Judges : Narayan Chandra Sil, J

Bench : Single Bench

Advocate : Sardar Amzad Ali and Karabi Ghosh, for the Appellant; S.P. Roychowdhury and Sandip Das, for the Respondent

Final Decision : Allowed

Judgement

N.C. Sil, J.—This appeal has been directed against the judgment and decree dated 5.5.1998 and 30.6.1998 respectively passed by Sri M.K. Chowdhuri, Civil Judge, Senior Division, Diamond Harbour, South 24-Parganas in connection with Title Appeal No. 48 of 1997 reversing the judgment and decree dated 23.7.1996 passed by Sri A.N. Roy, learned Munsif, Second Court, Diamond, Harbour in connection with Title Suit No. 53 1987.

2. It appears from the record that the suit before the learned Munsif was for declaration and injunction. The learned Munsif was pleased to dismiss the suit on contest while the lower appellate Court reversed the judgment of the trial Court and having allowed the appeal decreed the suit.

3. The plaint case in brief is that the properties in plot Nos. 839 and 840 originally belonged to four brothers namely Ganesh, Priyanath, Sitanath and Lalmohan Ghosh. There was no partition of the suit plots amongst the four brothers. Suit plots consist of plot Nos. 831, 832, 833 and 834 out of which plot No. 833 is a tank and other three plots are danga. The nonsuit plot Nos. 839 and 840 are the undivided family dwelling house. One Lalmohon, the predecessor-in-

interest of the appellant/plaintiff had 1/4th undivided share in the suit property. The plaintiff/appellant has 1/8th share in the suit property. The non-suit plot being Nos. 839 and 840 are the part and parcel of the suit plots and the suit plots having tank and kitchen garden are being used by the plaintiff and the suit plots are necessary for the convenient and beneficial enjoyment of the non-suit plots of the undivided family on which dwelling house is situated. The defendants contested the suit before both the Courts below and denied all the materials allegations.

4. The substantial question of law formulated for the determination in the instant appeal is as below:

"Is the lower Appellate Court erroneous in arriving at the correct conclusion in interpreting the terms "dwelling house" and to hold that the suit plots are part and parcel of the non-suit plots?"

5. Mr. Sardar Amzad Ali learned advocate along with Ms. Karabi Ghosh, learned advocate appearing for the appellant/defendant submits before me that according to the plaint case the defendants are the stranger purchasers of one of the suit plots being No. 831. It is pointed out by him that the said purchase was made on 22.1.1987. And thereafter the defendant No. 1 sold the said plot to the defendant No. 8. It is also pointed out by Mr. Ali that the transfer of the suit plots started from the year 1931, to the strangers. Mr. Ali further submits before me that the suit plots are never part and parcel of the dwelling house. Mr. Ali has then taken me through exhibit "Ka" which is a settlement map and tries to impress upon me that the dwelling house that is the non-suit plots and the suit plots are intervened by a road and the road is shown in the settlement map as plot No. 835, Mr. Ali has then argued before me that the plaintiff is to establish that the dwelling house belonged to an undivided family.

6. Mr. Ali has cited a number of case laws. Thus, it was held in the case of Manick Lal Singh Vs. Gouri Shankar Shah, that in determining whether a house is a dwelling house within the meaning of those words in Section 4(1) of the Partition Act it has to be first found out whether the house in question was used by the members of the family for residential purpose. Secondly it must be remembered that a dwelling house would include not merely the structure where the members of the family actually reside or use to reside but also all appurtenants such as a courtyard used by the members and even other structures, if there are any, as for example a kitchen or a cowshed or a shed for garage provided they are or were used by the members of the family as part of their residential house. Finally, the question will also have to be determined with reference to partition taking into consideration the equities in partition that is to say whether the portion of the house which does not come within the ambit of the word "dwelling house" is so small that it would be convenient to include that portion also in the dwelling house. In the said case the term "undivided family" appearing in the said section 4 of the Partition Act was interpreted in the terms that the said section does not require the property to belong to undivided family at the date of

the suit and it only means that it belonged to such family before a member transferred his share. It was also held that mere separation in mess will not make the family divided if they had joint property. Mr. Ali has also referred to the ratio decided in the case of Ram Bilas Tewari Vs. Smt. Shiv Rani and Others, in which it was held that the provisions of Section 4(1) of the Partition Act as also those of Section 44 of the Transfer of Property Act would be an Impediment to a remedy for partition where a share of a dwelling house belonging to an undivided family has been transferred to a person who is a stranger to the family and who seeks partition of the house. The conditions precedent for invoking the provisions of the aforesaid sections are that the house must be a dwelling house, secondly it must belong to an undivided family, thirdly a share of such a dwelling house has been transferred to a person who is stranger to the family and fourthly the transferee sues for partition of the house. It was also held in that case that where however the dwelling house is not owned by an undivided family, even a stranger who is a transferee of a share can ask for his share by partition.

7. Mr. Ali has also referred to the ratio decided in the case of Basanta Kumar Sen v. Gour Hari Dey 1954. IIIC CLJ 362. . His Lordship in arriving at His decision relied on the ratio decided in the case of Boto Krishna Ghose v. Akshoy Kumar 1946 50 CWN 450, on appeal 1949 54 CWN 660) and Dulal Chandra Chatterjee v. Gosthabehart Mitra 1952 56 CWN 681. I am tempted to quote observation and decision of the learned Judge which read as below :

"A house" or a "dwelling house" may mean a building or a hut or even something which is substantially useable for human residence vide Boto Krishna Ghose v. Akshoy Kumar, vide also Dulal Chandra Chatterjee v. Gosthabehari Mitra, but a garden or open land and or a tank cannot by themselves that is, apart from or independently of any hut or structure, reasonably constitute a "house" or a "dwelling house". They or either of them along with a "house" or a "dwelling house" proper taking these terms in their widest possible connotation, as indicated above, may no doubt come within that description but once they are dissociated from this last quoted physical component, they do not retain their original character and considered separately or apart from the "house" or "dwelling house" proper, they are no longer a "dwelling house" either on the theory of convenience of physical affinity or appurtenance or on the theory of physical integrity or parts or components. There the affinity or integrity is so completely broken that their legal character utterly changes and their legal incidents become materially different."

8. Mr. S. P. Roychowdhury, learned advocate appearing with Mr. Sandip Das, learned advocate for the respondent/plaintiff submits before me that the suit plots are appurtenant to the dwelling house standing on the nonsuit plot Nos. 839 and 840. It is pointed out by him that the defendants purchased share of the co-owner in the suit plot and so they are absolutely strangers. Mr. Roychowdhury further submits before me that in order to arrive at a correct division in the present appeal it is to be explored as to whether the suit plots are required for

the convenient use of the dwelling house situated on the non-suit plots and according to him this is a pure question of fact which cannot be agitated in the second appeal, Mr. Roychowdhury has then submitted before me in his usual frankness that if it is found that all the suit plots are not necessary for the convenient use, but a part thereof, a part decree can possibly be passed. Mr. Roychowdhury has then taken me through the averments made in paragraphs 2,3,6 and 7 of the plaint and tries to Impress upon me as regards the user of the suit plots by the plaintiff party. It is further argued by him that although the ground has been taken in paragraph 6 of the written statement filed by the defendant No. 2 that the properties were partitioned, the same was not proved by the defendant. Mr. Roychowdhury has also referred to paragraph 20 of the written statement where it is stated that the brother of the defendant No. 2 had married the daughter of Deben who is the maternal uncle of the plaintiff and thereby the defendants have become the members of the family of the plaintiff by the said marriage. Mr. Roychowdhury had summed up his submissions before me that there was no partition; the defendants are not the members of the family of the plaintiff and that the suit lies u/s 44 of the Transfer of Property Act was not urged before the lower appellant Court. Mr. Roychowdhury has then referred to a number of case laws.

9. Thus, it was decided in the case of *Dhirendra Nath Sadhukhan v. Tindari Sadhukhan & Ors.*, 1983 II CLJ 297 that by marrying the sister of the plaintiff the defendant cannot claim to be the member of the undivided family of the plaintiff.

10. Mr. Roychowdhury has then referred to the ratio decided in the case of *Gautam Paul v. Dehi Rani Paul* AIR 2001 SC 61. In the said case the suit for partition of family house was filed by the co-sharers of the stranger purchaser of share in the family house had not at any state asked for partition or demanded possession of his share. In the circumstances the Hon"ble apex Court held that allowing the co-sharers to exercise right of pre-emption was improper and liable to be set aside. It was further held in that case that admittedly the undivided family which owns the dwelling house is the undivided family of one Nirode and it is not the appellant's case that he is a member of the said undivided family of Nirode. Thus, the appellant not being a member of family of Nirode cannot be said to be a member of the undivided family to whom the dwelling house belongs. It was further observed by the apex Court that merely because the appellant is related by blood through a common ancestor does not make him a member of the family within the meaning of the term as used in Section 4 of the Partition Act. The apex Court made some valuable observations in deciding the case and I am tempted to quote the same as below :

"There is no law, which provides that co-sharer, must only sell his/her share to another co-sharer. Thus strangers/outsideers can purchase shares even in a dwelling house. Section 44 of the Transfer of Property Act provides that the transferee of a share of dwelling house, if he/she is not a member of that family, gets no right to joint possession or common enjoyment of the house. Section 44

adequately protects the family members against intrusion by an outsider into the dwelling house. The only manner in which an outsider can get possession is to sue for possession and claim separation of his share. In that case Section 4 of the Partition Act comes into play. Except for Section 4 of the Partition Act there is no other law which provides a right to co-sharer to purchase the share sold to an outsider. Thus before the right of pre-emption, u/s 4 is exercised the conditions laid down therein have to be complied with. One of the conditions is that the outsider must sue for partition. Section 4 does not provide the co-sharer a right to preempt where the stranger/outsider does not nothing (sic) after purchasing the share. In other words, Section 4 is not giving a right to a co-sharer to preempt and purchase the share sold to an outsider anytime he/ she wants. Thus even though a liberal Interpretation may be given, the interpretation cannot be one which gives a right which the Legislatures clearly did not intend to confer. The Legislature was aware that in a suit of partition to stranger/outsider, who has purchased a share, would have to be made a party. The Legislature was aware that in a suit for partition the parties are interchangeable. The Legislature was aware that a partition suit would result in a decree for partition and in a most case a division by metes and bounds. The legislature was aware that on an actual division, like all other co-sharers, the stranger/outsider would also get possession of his share. Yet the legislature did not provide that the right of pre-emption could be exercised "in any suit for partition". The legislature only provided for such right when the "transferee sues for partition". The Intention of the legislature is clear. There had to be initiation of proceedings or the making of a claim to partition by the stranger/outsider. This could be by way of initiating a proceeding for partition or even claiming partition in execution. However, a mere assertion of a claim to a share without demanding separation and possession (by the outsider) is not enough to give to the other co-sharers a right of pre-emption. There is a difference between a mere assertion that he has a share and a claiming for possession of that share. So long as the stranger/purchaser does not seek actual division and possession, either in the suit or in execution proceedings, it cannot be said that he has sued for partition. If any other interpretation is accepted then in all cases, where there has been a sale of a share to an outsider, a co-sharer could simply file a suit for partition and then claim a right to purchase over that share. Thus even though the outsider may have, at no stage, asked for partition and for delivery of the share to him, he would be forced to sell his share. It would give to a co-sharer a right to pre-empt and purchase whenever he/she so desired by the simple expedient of filing a suit for partition. This was not the intent or purpose of Section 4."

11. It was held in the case of Lal Behari v. Gourhari (54 CWN 912) that Section 44 of the Transfer of Property Act not only takes away the right of the transferee to ask for joint possession but also at the same time creates a right in favour of the other co-owners of the dwelling house who are affected by the sale to the strangers, to sue for an injunction restraining the latter from exercising any act of joint possession along with the plaintiff's or their co-sharers in respect of the

joint family residence. It was also held that the effect of the injunction is not to keep the defendant out of possession altogether. The latter has certainly a title to the undivided share purchased by him and he can possess it by adopting the only remedy of instituting a suit for partition unless, of course, he is pre-empted u/s 4 of the Partition Act. In fact, it was further held that the transfer contemplated by Section 44 of the Transfer of Property Act gives rise to a new cause of action to the co-owners affected thereby and the latter are entitled to enforce their right against the transferee which accordingly could not in any way be affected by introduction of the strangers on previous occasions, and no question of estoppel arises.

12. Mr. Roychowdhury has also referred to the ratio decided in the case of *Manick Lal v. Gouri Sankar* (supra) which has also been relied on by the learned advocate for the appellant. In the said case the question whether it is a dwelling house has been answered. In order to avert repetition I am not inclined to mention the ratio here once again.

13. Mr. Roychowdhury has then referred to the ratio decided in the case of *Bhabani Bewa and Others Vs. Akshoy Kumar Das and Another*, in which it was held that the expression house in Section 4 embraces not merely the structure or building but includes also the adjacent buildings, curtilage, garden court-yard, orchard and all that is necessary for the convenient occupation of the house but not that which is only for the personal use and convenience of the occupier. It was further held in that case that the question whether a particular plot of adjacent land is or is not necessary to the enjoyment of a house is to be determined on evidence. It was again held in that case that the mere fact that there is an intervening lane between the actual residential house and a plot which is claimed as appurtenant to it will not necessarily show that the latter plot does not form part of the dwelling house if it could be reasonably held on the evidence that the latter plot is used for the accommodation of servants or guests or for other purposes incidental to the use of the house by residence.

14. Mr. Roychowdhury has also referred to the ratio decided in the case of *Ganga Dutt Murarka Vs. Sm. Bibhabati Debi and Others*, in which it was, inter alia, held that the term "house" in Section 4 of the Partition Act embraces not merely the structure or building, but includes also adjacent buildings, curtilage, garden, court-yard, orchard and all that is necessary for the convenient occupation of the house, but not that which is only for the personal use and convenience of the occupier.

15. Mr. Roychowdhury has then referred to the ratio decided in the case of *Dorab Cawasji Warden Vs. Coomi Sorab Warden and others*, In the said case the appellant/plaintiff and his brother held disputed dwelling house which belonged to an undivided family and property was not divided by metes and bounds. Appellant's brother died intestate. The widow and sons of the brothers transferred their shares to a third party and in such circumstances it was held that the mischief of second paragraph of Section 44 of Transfer of Property Act

will come into operation against the vendee in respect of taking possession of the house considering the balance of convenience, which was in favour of the plaintiff/appellant and interim mandatory injunction against the vendors and vendees regarding the possession can be issued.

16. The learned advocate for both the parties have referred to the celebrated judgment passed by the Division Bench of this Court in the case of Kshirode Chunder Ghosal & Anr. v. Garoda Prosad Mitra 1910 12 CLJ 525. The ratio decided in that case finds mention in many of the judgments passed by the different High Courts in India in determination of the similar issue. The head note of the said judgment has it as below :

"The elements which must co-exist to attract the operation of Section 4 of the Partition Act, are, first, that the dwelling house should belong to an undivided family; secondly, that a share thereof should have been transferred to a person who is not a member of such family; and thirdly, that the transferee should sue for partition. The circumstances that the plaintiff, not a member of the family, had purchased, in addition to a share of the dwelling house, a share of other lands as well, of which he sought partition in the suit as framed, does not render inapplicable the provisions of Section 4.

The word "family" as used in the Partition Act, ought to be given a liberal and comprehensive meaning, and it Includes a group of persons related in blood, who live in one house, or under one head or management. It is not restricted to a body of persons who can trace their descent from a common ancestor.

It is not necessary to constitute an undivided family for the purposes of Section 4 that the members of the family should constantly reside in the dwelling house; nor is it necessary that they should be joint in mess.

The term "house" embraces, not merely the structure or building but includes also adjacent buildings, curtilage, garden, court-yard, orchard and all that is necessary for the convenient occupation of the house, but not that which is only for the personal use and convenience of the occupier. It includes the land on which the structure of the dwelling-house stands.

Whether a particular plot of adjacent land is or is not necessary to the enjoyment of a house is to be determined upon evidence."

17. Mr. Roychowdhury has frankly submitted before me that the plaintiffs suit was not one u/s 4 of the Partition Act but u/s 44 of the Transfer of Property Act and as such the suit is quite maintainable and thereby Mr. Roychowdhury has tried to refute the submissions made by Mr. Ali that the transferee had not come forward here in the Instant case with a prayer for partition in terms of the provisions of Section 4 of the Partition Act

18. Now, by dint of which relation the defendant claimed to be a member of the joint family of the plaintiff can hardly be a ground of his being the member of the family of the plaintiff, for, it is merely the claim of the defence that the brother of

the defendant No. 2 married Maya Rani, the daughter of the maternal uncle of the plaintiff.

19. Now, I shall consider the evidence of the parties adduced before the trial Court as regards of mode of use of the suit property. The plaintiff as PW-1 stated in his examination-in chief that it is not possible for the plaintiff to reside in his dwelling house situated on plot Nos. 839 and 840 without the four suit plots. The PW-1 then stated that suit plot No. 831 is used by the plaintiff as kitchen gardens where they cultivate vegetables and in the suit tank they use to make pisci-culture. It is also stated by the PW-1 that he and his co-sharers used the water of the suit tank for day to day purpose. In his cross examination the PW-1 stated that Sitanath, one of the sons of Gangaram Ghosh mortgaged his 1/4th share on bastu, danga land and tank to Bama Charan & Ors. Bama Charan is the ancestor of defendant Nos. 19, 20 and 21, He further stated that there was no tank in plot Nos. 839 or in plot No 840 and there was a "Doba" to the east of homestead. Both the "dobas" measure about 20 cubit x 25 cubits. It is also in the cross examination of PW-1 that there is another "doba" to the north of plot No. 840 with same measurement and the said doba is used by the plaintiff at times. There is "Ghat" in the said "doba". PW-1 summed up his evidence as regards the user of the suit property in the term that the plaintiff cultivates vegetables and makes pisci-culture in the suit tanks and so those are required by the plaintiff. PW-2 is the proforma defendant No. 2. He stated in his examination-in chief that the inmates of the house take bath, wash utensils and use the tank for other purposes. He also stated that in the bamboo-grove the inmates of the house defecate. In his cross examination the PW-2 admitted that there is a road in between the home-stead on plot Nos. 839 and 840 and the suit property in plot Nos. 831, 832, 833 and 834. He further stated that the bamboo- grove stands on suit plot No. 834 and vegetables are cultivated on suit plot Nos. 831. The PW-2 further stated in his cross examination that the village people take bath and catch fish in the tank in suit plot No. 833. PW-2 further stated that Sitanath sold the share of the plaintiff to Ablnash and thereafter it was taken back. The PW-2 again stated that the bamboo grove is seen from the road. The defendant No. 2 is the DW-1. He stated in his evidence that Sitanath sold his share in the suit property to Bama Charan. He also claimed that he has got his house on 5 decimel of land in suit plot No. 831. It has also stated in his evidence that there is a bamboo grove on suit plot No. 832 and 833 and 834. It is again stated in his evidence that there is bamboo grove in both plot Nos. 839 and 840. The defendant appears to have examined other two witnesses to support his case.

20. Now from the evidence of the parties it is candid that the way they are using the suit property does not suggest anything that in case of the entry of the defendants the user of the suit property by the plaintiff will not be possible. It further appears that there are a number of bamboo groves even on the homestead of the plaintiff where the plaintiff can go to attend his nature's call. Admittedly, the share in the suit property of one of the co-shares of the plaintiff

was mortgaged to the ancestor of the defendant party. Admittedly there exists a road bifurcating the homestead on the one hand and the suit property on the other. Admittedly, the suit tank is used by the villagers and also the villagers cultivate fish there. All this goes to show that the exclusive joint possession of the plaintiff with the co-sharers in respect of the suit property has been destroyed since long.

21. There are two parts of Section 44 of the Transfer of Property Act and thus the second part of the said section reads as under :

"Where the transferee of a share of a dwelling house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common part enjoyment of the house."

22. In the instant case the dwelling house of the plaintiff is situated on the non-suit plot Nos. 839 and 840. The plaintiff brought the suit in respect of the other plot being Nos. 831, 832, 833 and 834 with this plea that those plots are required for their convenient use and habitation in their dwelling house on the non-suit plots. In other words it may be placed in this way that if a third party is permitted to possess the suit plots as transferee of a certain share therein, the convenient use and habitation of the plaintiff in their dwelling house will be shuttered. Admittedly, the suit plots are not adjacent to the dwelling house of the plaintiff on the non-suit plots.

23. Mr. S. P. Roychowdhury in course of his argument has referred to the book *The Transfer of Property Act, 9th Edn* at page 337" written by the celebrated author Mulla wherein it appears that the learned author after having followed the ratio decided by the Supreme Court in the case of *Dorab Cawasji Warden Vs. Coomi Sorab Warden and others*, which has also been discussed at page 11 of this Judgment, observed:

"Once it is held that the plaintiff is entitled to protection under the second part of Section 44 and the stranger purchasers are liable to be restrained, it would follow that even if the defendants have been put in possession or have come jointly to possess, they can be kept out by injunction. The remedy of the stranger purchaser is actually one of partition and until then, he is obliged to keep out from asserting joint possession. Denying an injunction against such transferee would prima facie cause irreparable injury to the other member of the family. Thus where the purchasers were Inducted in the premises in a hurried and clandestine manner defeating the appellants" attempt to go to Court for appropriate relief, the Supreme Court held that in such circumstances, it is but Just and necessary that the respondent purchasers be directed by an interlocutory mandatory injunction to undo what they have done."

24. The term "dwelling house" used in Section 44 of the Transfer of Property Act has been Interpreted in the several judgments referred to by the learned advocates for both the parties in the instant case which I have already mentioned in the foregoing pages of this judgment and it appears that a

"dwelling house" belonging to an undivided family is not one where the plaintiff actually resides but includes all other appurtenants used by the members of that undivided family as part of their residential house. But, in order to keep the term "dwelling house" of the undivided family protected in that sense, it is also incumbent upon the plaintiff to substantiate by evidence that on any point of time they were not dissociated from the physical component. Similarly, the properties will lose its character "dwelling house" as contemplated in Section 44 of the Transfer of Property Act if the plaintiff fails to substantiate that those are necessary for the convenient use of their occupation and habitation on the structure where his residential house is situated.

25. In the celebrated judgment of this Court in the case of Kshirode Chunder Ghosal (*supra*) it was decided whether a particular plot of adjacent land is or is not necessary for the enjoyment of a house is to be determined upon evidence. I have already discussed the evidence adduced by the parties and it was established that the nature of joint possession of the suit plots by the plaintiff and the other co-sharers was destroyed since long. Accordingly, the suit plots do not come within the term "dwelling house" as described in Section 44 of the Transfer of Property Act.

26. Here in the instant case the title and share of the plaintiffs are not denied by the defendants. Thus in such situation where the suit plots do not come within the terms "dwelling house", the plaintiffs do not appear to be entitled to declaration of their share without prayer for partition.

27. The first appellate Court observed in the Judgment that because of the fact that there are a number of "dobas" (small pond) situated on the non-suit plots and those "dobas" are not used by the plaintiff for all the time and so the tank on the suit property where the plaintiff cultivates fish and the Danga land of the suit plots where the plaintiff grows vegetables are to be treated as included in the "dwelling house" on the non-suit property as those are used for the convenient and beneficial enjoyment of the dwelling house. The learned Civil Judge, senior division sitting in the first appellate Court misdirected himself inasmuch as it has escaped his notice that the convenient personal use of the plaintiff is not a matter to be reckoned with for the determination as to whether the suit property is to be treated as "dwelling house". The first appellate Court had also overlooked the evidence adduced by the parties before the trial Court that the suit tank is used by villagers. It was also not taken into consideration by the first appellate Court that once a portion of the suit property was transferred to the ancestor of the defendant, although it is the case of the plaintiff that subsequently it was taken back. But, if the undivided character of the joint property is disturbed even for the time being, that must have some negative impact on the claim of the plaintiff made in the plaint.

28. The first appellate Court made an observation in the judgment that the trial Court in coming to the conclusion that the suit plot No. 832 cannot be treated as part of the dwelling house did not assign any reason, but unfortunately it

appears that the trial Court came to the conclusion after assigning reasons therefor. Thus, I am Inclined to hold that the judgment and decree passed by the first appellate Court were not based on what is in the evidence of the parties adduced before the trial Court or on the principles of law established by the Hon"ble apex Court, as discussed, from time to time.

29. The learned Munsif, Sri A. N. Roy wrote the judgment in the vernacular which appears to me to be a specimen of the kind. He appears to have dealt with the judgment in an analytical manner and his acuity deserves accolade and for that purpose an extract of this view may be communicated to him wherever he is posted. Trial Court further appears to have dealt with the evidence placed before him in the proper manner and the decision arrived by him is liable to be affirmed.

Thus, the present appeal succeeds and allowed on contest The Judgment and decree passed by the lower appellate Court are hereby set aside. The suit is dismissed. The parties are directed to bear their respective costs.