

**(2012) 04 CAL CK 0008**

**Calcutta High Court**

**Case No:** S.A. No. 177 of 2005

Samir Kumar Dutta

APPELLANT

Vs

Sunil Kumar Dutta

RESPONDENT

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**Date of Decision:** April 18, 2012

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 3
- Specific Relief Act, 1963 - Section 15(c)

**Citation:** (2012) 3 CHN 487

**Hon'ble Judges:** Tarun Kumar Gupta, J

**Bench:** Single Bench

**Advocate:** Pratip Kumar Chatterjee and Pranab Kar, for the Appellant; Priyabrata Ghosh and S. Bhattacharya, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Tarun Kumar Gupta, J.

This appeal is directed against judgment and decree dated 3rd April, 2004 passed by learned Additional District Judge, Fast Track Court, Kandi, Murshidabad in Title Appeal No. 15 of 2000 reversing the judgment and decree dated 30th April, 1999 passed by learned Civil Judge (Senior Division), Kandi, Murshidabad in O.S. No. 44 of 1994. Respondent Nos. 1-3 namely Sunil Kumar Dutta, Dilip Kumar Dutta and Joydev Kumar Dutta filed said Title Suit against Kiriti Bhusan Dutta (defendant No. 1), Iti Dutta (defendant No. 2) and Prabir Kumar Dutta (proforma defendant No. 3) for specific performance of contract. Plaintiffs alleged that plaintiffs, defendant No. 1, Proforma defendant No. 3 and defendant No. 2's husband Samir Kumar Dutta were brothers and used to reside in joint mess and property. Suit plot Nos. 214, 215 and 216 being amalgamated plots of land were purchased by the brothers through different kobalas in the name of defendant No. 1 Kiriti Bhusan Dutta and defendant No. 2 Iti Dutta. Suit plot No. 214 was purchased in the name of defendant No. 1 Kiriti Bhusan Dutta and suit plot Nos. 215 and 216 were purchased in the name of

defendant No. 2 Iti Dutta. In view of some disputes and differences between the parties Iti Dutta filed a partition suit being Title Suit No. 93 of 1991 against defendant No. 1 Kiriti Bhusan Dutta in the Court of Assistant District Judge, Kandi and the suit was disposed of on compromise. According to terms of said solenama decree present plaintiffs and proforma defendant No. 3 had 2/3rd share in those properties and Rs. 23,000/- was fixed for that share. It was further held that present plaintiffs and proforma defendant No. 3 would pay Rs. 23,000/- and interest to the defendant No. 1 Kiriti Bhusan Dutta and defendant No. 2 Iti Dutta and who in turn would execute and register the necessary sale deed in favour of the plaintiffs and proforma defendant No. 3. The plaintiffs were all along ready to pay said amount together with interest for execution of the sale deed by defendant Nos. 1 and 2. They accordingly sent advocate's notice dated 9th of March, 1994 to defendant Nos. 1 and 2 requesting them to execute and register sale deeds on receipt of necessary money. They received said notice on 10th of March, 1994. Defendant No. 1 accepted a sum of Rs. 11693/- out of Rs. 15,590/- against a receipt and was agreeable to execute the sale deed in favour of the plaintiffs. However, defendant No. 2 in spite of receipt of said notice refused to execute any sale deed on receipt of money. Hence was the suit.

2. Defendant No. 1 Kiriti Bhusan Dutta (respondent No. 4 in this appeal) filed a written statement alleging that plaintiffs had no locus standi to file the suit and that he was the absolute owner of suit plot No. 214. However, he admitted about filing of said partition suit being No. 93 of 1991 by defendant No. 2 Iti Dutta (on her death her heirs are appellants in this second appeal) and passing of a compromise decree and expressed his willingness to comply the terms and conditions of said solenama.

3. Defendant No. 2 Iti Dutta filed a written statement alleging inter alia that terms and conditions of said compromise petition filed in partition suit No. 93 of 1991 were neither legal nor enforceable and that the suit was not maintainable as per provisions of Specific Relief Act and Contract Act. It was her further case that the plaintiffs being not parties to the compromise petition were not entitled to file the suit and that no money was also tendered in terms of said compromise petition. The suit was liable to be dismissed.

4. Both sides adduced evidence, both oral and documentary. Learned Trial Court dismissed the suit on the grounds that the terms and conditions of Solenama decree in Partition Suit No. 93 of 1991 were extraneous and were contrary to the provisions of section 14 of the Partition Act. Learned Trial Court further held that the Solenama cannot be treated as a valid contract and as such cannot be treated as a family arrangement. Learned Trial Court was of the opinion that as the compromise petition dealing with transfer of property worth more than Rs. 100/-, was not registered it cannot be acted upon. It was further held that the plaintiffs being not parties to said Solenama cannot enforce the same by filing a suit.

5. The plaintiffs filed an appeal against said judgment and decree of dismissal. Learned Lower Appellate Court, however, allowed the appeal by decreeing the suit and reversing the judgment and decree of learned Trial Court. The heirs of defendant No. 2 Iti Dutta (since deceased) have filed this second appeal.

6. At the time of admission of this second appeal the following substantial question of law was framed.

1. Whether the learned Court of Appeal below committed substantial error of law in reversing the judgment and decree passed by the learned Trial Court by totally overlooking the fact that the plaintiffs of the present suit were not made parties to the earlier suit for partition.

7. Learned counsel for the appellants has assailed the impugned judgment of lower Appellate Court on the following grounds.

1. Plaintiffs not being parties of the Solenama decree have no right to file any suit for enforcing the terms of said Solenama.

2. Solenama cannot be treated as an agreement and hence it was not enforceable.

8. In support of his contention he has referred a case law reported in [M.C. Chacko Vs. The State Bank of Travancore, Trivandrum,](#)

9. Learned counsel for the respondent plaintiffs, on the other hand, submits that as no interest passed but only some obligations were created through said compromise decree there was no question of registration of said compromise decree for being valid. His next contention is that at the time of effecting compromise under Order 22 Rule 3 of the CPC the Court has power to pass a decree as per terms of the compromise petition even if the subject matter of the agreement of a compromise is not the same as the subject matter of the suit. He next submits that in terms of said section 15 (c) of the Specific Relief Act, 1963 where the contract is a settlement of marriage or a compromise of doubtful rights between the members of the same family, any person beneficially entitled thereunder may obtain a suit for specific performance of contract. According to him, some benefits were conveyed to the present plaintiffs and proforma defendant No. 3 through said compromise decree. His further contention is that the party's being brothers and brothers' wife were members of same family being in joint mess. According to him in terms of said section 15(c) of the Specific Relief Act present plaintiffs had every right to file said suit for specific performance on contract in terms of said Solenama decree. According to him, learned Lower Appellate Court was justified in passing the decree by reversing the judgment of learned Trial Court.

10. There is no denial that present plaintiffs, defendant No. 1 and defendant No. 2's husband were brothers living in joint mess. Defendant No. 2 filed one partition suit being Title Suit No. 93 of 1991 against defendant No. 1 relating to suit plots. Said suit ended in compromise. Said compromise petition was signed by the parties of

said partition suit. As per terms of said compromise decree some benefits were given to the present plaintiffs and proforma defendant No. 3 by way of allotting 2/3rd share to them. They were also given the right to obtain sale deeds accordingly from defendant Nos. 1 and 2 on payment of amount of Rs. 23,000/- together with interest thereupon within a stipulated time frame. As such plaintiffs and proforma defendant No. 3 were persons beneficially entitled under said compromise decree executed between members of the same family. As such present plaintiffs were entitled to file said suit for specific performance of contract in terms of section 15(c) of the Specific Relief Act, 1963.

11. In the referred case law of M. C. Chacko (supra) it was held by Hon"ble Apex Court that "a person not a party to a contract, cannot, subject to certain well recognized exceptions, enforce the terms of the contract". In that case Hon"ble Apex Court further held that "the recognized exceptions are that beneficiaries under the terms of the contract or where the contract is a part of the family arrangement may enforce the contract." The aforesaid case law of Hon"ble Supreme Court is squarely applicable in this case also in favour of the plaintiffs on the grounds as discussed above.

12. There are sufficient evidence on record to show that plaintiffs were all along willing to perform their part of contract and offered the price to both defendant Nos. 1 and 2 within the stipulated time. Under these facts and circumstances, I am of opinion that the learned Lower Appellate Court was justified in passing the decree by reversing the judgment and decree of learned Trial Court.

13. As a result, the appeal fails.

14. The impugned judgment and decree of learned Lower Appellate Court are hereby affirmed.

15. However, I pass no order as to costs.

16. Send down Lower Court record along with a copy of this judgment and decree to Lower Court at the earliest. Urgent photostat certified copy of this judgment be supplied to learned counsel/counsels of the party/parties, if applied for.