

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Sugato Majumdar

SA/312/2009

CAN/4/2026

UDDHAB SINGH BABU & ANR

VS

HEMANTA KR. SINGH MANKI

For the Appellants : Mr. Uttiya Ray, Adv.
Mr. Atish Santra, Adv.

For the Defendant : Mr. Sounak Bhattacharyya, Adv.
Mr. Sarthak Burman, Adv.

Hearing concluded on : 06.10.2026

Judgment on : 13.10.2026

Sugato Majumdar, J. :

The instant Second Appeal is preferred against the Judgment and Decree dated 5th August, 2006 passed by the Additional District Judge, 1st Court, Purulia in Title Appeal No. 118 of 2001, reversing the Judgment and Decree dated 10th July, 2001 passed by the Civil Judge, Senior Division, Purulia in Title Suit No. 91 of 1988.

The plaint case was that there was a Mankiary Estate comprising of several *mouzas* described in Schedule 2 & 3 of the plaint within P.S.-Baghmundi, District-Purulia. One Chunu Singh Manki was a proprietor of the said Mandiary Estate and it

was recorded in the name of said Chunu Singh Manki at a time of Cadastral Survey operation. Chunu Singh expired leaving four sons, namely, Kolebar, Dolgobinda, Mangobinda and Jitprasad. Kolebar became the Manki by virtue of rule of primogeniture and his brothers became *khorphoshdar* according to the customs. Schedule 2 land was a vast one and Schedule 3 was a land of inter mediatory interest. The said Kolebar died leaving two sons, namely, Brajakishore and Krishnamohan. Brajakishore had two wives who were Sumitra and Manorama. Plaintiff/Respondent was the only son of Brajakishore through his first wife. On death of Brajakishore, the Plaintiff/Respondent became the Manki and his uncle Krishnamohan became de-facto guardian. The second wife Manorama was an issueless. According to the family custom, Krishnamohan kept Manorama as his wife. Manorama long after death of Brajakishore gave birth of Defendant Nos. 1 & 2. Brajakishore, at the time of death, made an oral grant of $\frac{1}{2}$ share of the property described in the plaint schedule in favour of his brother Krishnamohan. At that time both brothers were in the same mess and Krishnamohan used to look after the estate as guardian of the Plaintiff/Respondent.

During operation of Bihar land Reforms Act and West Bengal Estates Acquisition Act as well as R.S Operation of land, Krishnamohan as guardian of the Plaintiff/Respondent used to represent the later before the Settlement Authority. After death of Krishnamohan in the year 1985 when the Plaintiff/Respondent took charge of the estate, came to know that Krishnamohan recorded his name as the proprietor of the Manki Estate. It was pleaded that Krishnamohan was only a *Khorphoshdar*; he did not acquire any right, title and interest in the property. After death of Krishnamohan, the Plaintiff/Respondent granted half share of the properties, mentioned in Schedule 2 of the plaint, to the Defendant Nos. 1 and 2 as *Khorphoshdar*. Therefore, the Plaintiff/Respondent retained and was the owner of the half share of the property mentioned in Schedule 2 of the plaint and

compensation on account of vesting of the Schedule 3 land in the State as the intermediary property.

The settlement record erroneously recorded the name of Krishnamohan. The Plaintiff/Respondent and the Appellants/Defendant Nos. 1 & 2 are in possession of some land of Schedule 2 property separately and have joint possession of some others. Presently, on 18/02/1988, the Plaintiff/Respondent submitted the return exercising his choice of retention. But the Settlement Authority did not reopen the case to correct the erroneous entry of the Record of Rights.

The Defendant No.5 threatened the Plaintiff/Respondent with dispossession. Hence, the Plaintiff/Respondent filed the original suit praying for declaration that the Plaintiff/Respondent is the Manki/Proprietor of the Mankiary Estate comprised in the properties described in Schedule 2 & 3 of the plaint, on finding that succession and inheritance of the family was governed by the law of primogeniture and the Plaintiff/Respondent being eldest son to the eldest wife as succeeded to the office of Mankiary Estate and a further finding that the decision of the Settlement Authority is illegal *ultra vires*; partition of half of the share of the Plaintiff/Respondent in respect of Schedule 2 property injunction and consequential reliefs.

The Appellants/the Defendant nos. 1 & 2 contested the suit by filing written statement. It was averred by the answering Defendant that Sumitra was not the married wife of Brajakishore; she was the only kept. On the death of the father of the Plaintiff/Respondent, his mother was the guardian of his personal property. Chunu Singh Manki was a Bhumij and governed by the Dayabhaga School of Hindu Law. The estate of Chunu Singh Manki used to be governed by the rule of primogeniture subject to the rule of disqualification and subject to the approval of the superior proprietor. It was contended that since Sumitra was not a married wife of the Brajakishore, the son of Sumitra was not inheritor of Mankiary Estate. Brajakishore

was married to Manorama but because of virulent disease of Brajakishore, Kalebar that is the father of Brajakishore got his marriage of Manorama dissolved and Manorama was subsequently given in marriage to Krishnamohan. Kolebar verbally settled some lands with the Respondent/Plaintiff which were recorded in his name and he has been in possession of those lands. On death of Kolebar, his second son inherited the Mankiary Estate. His eldest son Brajakishore had been excluded from inheritance due to incurable leprosy. His inheritance have been approved and recognized by the Manager of the Wards and Encumbered Estate. Since then Krishnamohan possessed the entire estate as the sole proprietor till 14/04/1984 when he became raiyat in respect of *khas* lands of the estate. The entire estate was recorded in R.S. Record of Rights in the name of Krishnamohan. The statement that Brajakishore made oral grant of $\frac{1}{2}$ share in favour of Krishnamohan is false. The Plaintiff/Respondent was all along aware of the fact that entire estate was recorded in the name of Krishnamohan. The Plaintiff/Respondent never became a Manki and never had possessed any portion of the suit property. It was further stated that after death of Krishnamohan the Appellant/Defendant filed a petition for permission to submit fresh return and they exercised their choice of retention.

The State contested the suit by filing separate objection. It was contended that the suit was bad for defect of parties. The suit property was recorded in the name of Krishnamohan Manki and suit property described in Schedule 3 became vested in the State. The Plaintiff/Respondent did not raise any objection at that time. It was further contended that the R.S. Record was correct and Krishnamohan was in actual possession. The Respondent/Plaintiff had no right to submit 'B' form return and he is not entitled to any compensation for Schedule 3 property.

On the rival pleadings, following issues were framed:

1. Is the suit maintainable in its present form?

2. Is there any cause of action to file this suit?
3. Is the suit bad for defect of parties?
4. Is the suit barred by limitation?
5. Is the Plaintiff Manki of the suit estate?
6. Has the Plaintiff right, title and interest in the suit property?
7. Is the Plaintiff entitled to get decree as prayed for?
8. To what other relief or reliefs the Plaintiff entitled?

The Trial Court dismissed the suit for different reasons. It was observed that the Plaintiff/Respondent was not in possession and the cause of action was manufactured. The suit failed to disclose the cause of action hence, the prayer for partition was also refused.

On being aggrieved and dissatisfied an appeal was preferred which was registered and number as Title Appeal No. 118 of 2001. The appeal was heard by the Additional District Judge, 1st Court, Purulia and decided the same in terms of Judgment and Decree dated 05/08/2006. In the very lengthy judgment, the Appellate Court explored into a social history of Mankiary Estate and social tradition of Jangalmohal and finally allowed the appeal and the appeal was decreed on contest in preliminary form. The First Appellate Court concluded that the Respondent/Plaintiff had been able to prove his right, title and interest in respect of 8 anna share over the entire suit property.

On being aggrieved and dissatisfied, the instant appeal was preferred. The following substantial questions of law were framed by the Division Bench:

- I. “Whether law of primogeniture is applicable to the suit land without any sanction of codified law.
- II. Whether relief can be given to the Plaintiff on the basis of such law solely relying on the survey report of Mr. J. Raid.
- III. Whether the issue of limitation has been rightly dealt with.”

The Learned Counsel for the Appellant/Defendant filed notes of argument and submitted that the First appellate Court failed to appreciate that the suit was barred by Section 34 of Specific Relief Act, 1963 read with Section 6 of the Limitation Act, 1963. It was further argued that the First Appellate Court did not also consider the issue of defect of parties. Next, it was submitted by the Learned Counsel for the Appellant/Defendant that there is no existence of law of primogeniture after coming into force of Hindu Succession Act, 1956. The First Appellate Court ignored this provision of law also. Next argument was that the suit was barred under the provisions of West Bengal Estate Acquisition Act, 1953. The Learned Lawyer referred to following decisions in support of his case:

1. **N. Padmamma & Ors. Vs. S. Ramkrishna Reddy & Ors.**
[(2008) 15 SCC 517]
2. **Salekh Chand (dead) by LRS. Vs. Satya Gupta & Ors.**
[(2008) 13 SCC 119]
3. **Akkamma & Ors. Vs. Vemavathi & Ors.**
[(2021) 18 SCC 371]
4. **Bailochan Karan Vs. Basant Kumari Naik & Ors.**
[(1999) 2 SCC 310]

Per contra, the Learned Counsel for the Respondent/Plaintiff argued that law of primogeniture was a tradition under Mankiary tradition and also under Choto

Nagpur Tenancy Act, 1908. According to him, the Learned First Appellate Court rightly considered this law of primogeniture and allowed the suit. The order of the First Appellate Court should not be interfered into.

I have heard rival submissions.

Firstly, the Trial Court came to the conclusion that some of the lands were in occupation of subsequent purchasers who were not made party to the suit. According to the Trial Court, the suit is bad for defect of parties. One of the prayers in the plaint is partition. It goes without saying that all the co-owners are necessary parties in absence of any of whom no effective decree can be passed. Non-joining of any of the co-owner is, therefore, made the suit bad for non-joinder of the necessary party which was fatal qua the suit. The conclusion of the Trial Court was, therefore, correct. The First Appellate Court committed error in fact as well as in law in ignoring the conclusion of the Trial Court. Secondly, the Trial Court considered the law of primogeniture in the Mankiary. The First Appellate Court possibly was more enthused to compose a social history than to write a judgment and explored to wriggle out a history of Mankiary Estate, in complete oblivion of Section 4 of the Hindu Succession Act, 1956. The First Appellate Court upheld the right of Plaintiff/Respondent on the basis of law of primogeniture.

Section 4 of the Hindu Succession Act, 1956 provides that the Act has an overriding effect over any custom or usage in any part of India. After coming into force of the Hindu Succession Act, 1956 and by virtue of this Section 4 of the Act prevalence of law of primogeniture stood abrogated and law of succession in accordance with Hindu Succession Act, 1956 became prevalent. Therefore, instead of Mankiary Estate or Mankiary Tradition, Hindu Secession Act, 1956 would govern the relationship and law of succession. Plaintiff/Respondent's right to property on the basis of Mankiary Estate or Mankiary Tradition cannot be allowed. The observation

and findings of the First Appellate Court in this regard in contrary to codified law and provisions as stated above hence perverse. The Plaintiff has no right, title and interest under this Mankiary Law. The First Appellate Court failed miserably to consider all these legal provisions and principals of law. Therefore, the Judgment and Order passed by the First Appellate Court suffers from serious infirmity and demands interference.

In nutshell, the instant appeal is allowed. It is ordered that the impugned Judgment and Decree passed by the Additional District Judge, 1st Court, Purulia in Title Appeal No. 118 of 2001 stands overruled and set aside.

The Judgment passed by the Trial Court stands affirmed.

The instant appeal is stands disposed along with all pending applications, if any. The Respondent shall also liable to pay cost of litigation of Rs.50,000/- to the Appellant.

Let T.C.R be returned.

(Sugato Majumdar, J.)