

**17 SCOB [2023] HCD 154****HIGH COURT DIVISION  
First Appeal No. 442 of 2012****Probir Kumar Dey at present Saiful Islam and another**

....Defendant No.1 &amp; 2-Appellants

-Versus-

**Shipra Rani Dey and others**

.....Plaintiffs -Respondents.

Mr. N.K. Shaha, Senior Advocate  
.....for the defendant-appellant  
Mr. Tushar Kanti Roy, with Mrs. Runa  
Iqbal, Advocates  
.....for the plaintiffs-respondents

Heard on 26.06.2019, 30.06.2019,  
10.07.2019, 14.07.2019, 17.07.2019,  
22.07.2019, and 23.07.2019

Judgment on 28.08.2019.

**Present:****Mr. Justice A.K.M. Abdul Hakim****And****Ms. Justice Fatema Najib****Editors' Note:**

**One Rabindra Kumar Dey was the owner and possessor of 4.81 decimals of land. He died in 1978 leaving behind his wife, two sons and four daughters. One of his sons, namely, Prodip died and the other son Probir converted to Islam before Rabindra's wife Arati Bala Dey filed the instant suit for partition claiming saham. During the pendency of the suit plaintiff died and Rabindra's unmarried daughter Shipra Rani was substituted as plaintiff. Question arose as per Daya Bhaga school of law whether the plaintiff Arati Bala Dey inherited from her deceased husband; whether the substituted plaintiff Sipra Rani Dey is entitled to inherit from her deceased father and mother; and whether the plaintiffs are entitled to a decree for partition as prayed for? The High Court Division analyzing the relevant laws, particularly, the Hindu Women's Rights to Property Act 1937, Caste Disability Removal Act, 1850 and the Bangladesh Laws (Revision and Declaration) Act, 1973 held that when a Hindu governed by the Daya Bagha School of Hindu Law dies intestate leaving any property, his widow becomes complete owner and co-sharer of the property during her life time and she is entitled to be in the same position as a son in the matter of claiming partition. The Court further held that after conversion to the faith of Islam son Probir has lost his right to his father's property and, as such, the substituted plaintiff Sipra Rani Dey, the unmarried daughter of Rabindra Kumar Dey, is entitled to get the property on partition.**

**Key Words:**

The Hindu Succession Act, 1956; The Hindu Women's Rights to Property Act, 1937; Conversion to Muslim; Partition; Caste Disability Removal Act, 1850; The Bangladesh Laws (Revision and Declaration Act, 1973 (Act No. VIII of 1973); share on partition

**Section 3 of the Hindu Women's Rights to Property Act, 1937:**

Let us now consider whether a Hindu widow is entitled to get the same share as a son. In this connection reference may be made to section 3 of the Hindu Women's Rights to Property Act, 1937 (XVIII of 1937). Sub section (1) of section 3 of the said Act says that when a Hindu governed by the Daya Bagha School of Hindu Law dies intestate leaving any property dies, his widow, shall, subject to the provisions of sub-section(3), be entitled to the same share as a sons. Sub-section (3) of section 3 of the said Act further says that any interest devolving on a Hindu widow shall be the limited interest known as a Hindu Woman's estate, but she shall have the same right of claiming partition as a male owner. Further sub-section (2) of section 1 of the said Act stipulates that it extends to the whole of Bangladesh. Thus from reading of the aforesaid provisions of sub-sections (1) and (3) of the Hindu Women's Rights to Property Act, 1937 it is clear that the widow during the period of her life time she became complete owner and co-sharer of the property and this sub-section 3(3) has the effect of putting the widow in the same position as a son in the matter of claiming partition. (Para 18 and 19)

Hindu law does not apply where a person enters into a religious order renouncing all worldly affairs, his action is tantamount to Civil death, and it excludes him altogether from inheritance and from a share on partition. (Para 22)

It is pertinent to note that Hindu law is religious law, the right to property is made by that law dependent upon the observance of the tenants of that faith. Consequently, a lapse from orthodox practices of Hinduism would under that law entail forfeiture of the caste and all rights to property and inheritance. Renouncement of religion has a disability, but after the passing of the Caste Disability Removal Act, 1850 (Act XXI of 1950), change of religion is no ground of exclusion of inheritance. But after the repealing of the Act XXI of 1850 by the Bangladesh Laws (Revision and Declaration Act, 1973 (Act No. VIII of 1973) the persons converts into another religion are now forfeited from the inheritance and from the joint family property and fathers property. (Para 22)

**JUDGMENT****Fatema Najib J:**

1. This appeal is directed against the judgment and decree dated 23.09.2012 passed by learned Joint District Judge, First Court, Noakhali in Title Suit No.72 of 2007 decreed the suit in part.

2. One Arati Bala Dey as sole plaintiff instituted Title Suit No.72 of 2007 on 04.11.2007 in the First Court of Joint District Judge, Noakhali impleading the appellants as defendant nos. 1 and 2 and the respondent nos. 3-21 as defendant nos.3-14 praying for partition of 2.33  $\frac{2}{3}$  decimals of land more fully described in the schedule to the plaint. During pendency of the suit, sole plaintiff, Arati Bala Dey died and her daughter who was originally impleaded as defendant no.14, her name has been struck off from defendant by Order no.7 dated 28.04.2008 and substituted her as plaintiff no. 1(ka) in place of Arati Bala Dey. Subsequently, defendant no.6 died and his heirs has been duly substituted as defendant nos.16-19 vide order no. 20 dated 17.02.2009. Sheema Rani Dey, Jarna daughter of Robindra Kumar Dey, who converted to Muslim was added as defendant no. 15 in the name of Jannatul Ferdous vide order no.20 dated 17.02.2009. Polash Chandra Pal, son of Mira Rani Dey and

Sujun Chandra Pal son of Ira Rani Dey have been substituted as plaintiffs vide order No.73 dated 11.09.2012. On the prayer of the plaintiff the defendant nos. 20-21 was added as defendants. In the appeal the respondent nos. 5-8 died and since they did not contest the suit, their heirs were not substituted and their names have been struck off from the memo of appeal by order dated 06.05.2014.

3. The case of the plaintiff, in brief, is that, the suit land measuring 5.10 decimals of land was originally belonged to Rabindra Kumar Dey, who got the same through gift and inheritance from his mother and father respectively. After transferring, while possessing 4.81 decimals of land, Rabindra Kumar Dey died leaving behind wife Arati Bala Dey, two sons namely, Prodip Kumar Dey and Probir Kumar Dey and four daughters Mira Bali Dey, Ira Rani Dey, Sheema Rani Dey and Shipra Rani Dey. Mira Rani Dey and Ira Rani Dey got married during life time of their father and the rest two daughters and two sons were minors at the time of death of their father Rabindra Kumar Dey. According to Daya Bagha School unmarried daughters can enjoy the land of their father till marriage. Arati Bala Dey while owning and possessing the suit land with her two sons, Prodip Kumar Dey, died leaving behind mother and brother Probir, who converted to Muslim. Sheema Rani Dey, daughter of Rabindra Kumar Dey, also converted to Muslim and married a Muslim boy. The plaintiff Arati Bala Dey got  $\frac{1}{3}$  i.e.  $1.60\frac{1}{3}$  decimals out of total land 4.81 decimals of land by inheritance from her husband. Prodip Kumar Dey out of his share  $1.60\frac{1}{3}$  decimals of land sold way 0.27 decimal during his life time. So, the plaintiff Arati Bala Dey got  $1.60\frac{1}{3}$  decimals by inheritance from her husband and son Prodip had  $1.33\frac{1}{3}$  decimals after selling 0.27decimals of land. In this way Arati Bala Dey and Prodip Kumer Dey got together  $2.93\frac{1}{3}$  decimals of land. The plaintiff Arati Bala Dey along with her unmarried daughter Sipra Rani Dey, who later on was substituted as plaintiff no. 1 (ka) in place of Arati Bala Dey had been living in a house situated at S. A. plot no.921 of S. A. Khatian No.253. The plaintiff Arati Bala Dey claimed partition which the defendant no.1 Probir Kumar Dey denied the same on 25.09.2007. So, the plaintiff, Arati Bala Dey was constrained to file the present suit.

4. The defendant no.1, Probir Kumar Dey alias Saiful Islam contested the suit by filing a written statement contending, interalia, that the suit land was belonged to his father, Rabindra Kumar Dey, who died on 05.10.1978 leaving behind two sons namely, Probir Kumar Dey and Prodip Kumar Dey, wife, the plaintiff Arati Bala Dey and four daughters. But according to Daya Bagha School the wife and daughters of Rabindra Kumar Dey are not entitled to get saham in the suit land. Prodip sold out his entire shares to different persons and extinguished title in the suit land; that the plaintiff earlier filed Title Suit No. 11 of 1990 in the Court of Assistant Judge, Chatkhil for the same land and in the plaint she admitted that Prodip sold his entire share and Prodip and Probir inherited the land of their late father Rabindra Kumar Dey in equal shares measuring  $2.40\frac{1}{2}$  acres; that the aforesaid suit was filed by mother of Probir, Arati Bala Dey as legal guardian of her minor son, Probir and suit was decreed on 20.06.1992; that against the said decree Abdul Khaleque filed Title Appeal No.34 of 1990 in the Court of District Judge, Noakhali, which was dismissed on 23.07.1991 and the decree passed by the trial court was affirmed; that this defendant Probir as youngest son of Rabindra

Kumar Dey inherited his  $2.40\frac{1}{2}$  acres in the suit khatian and has been possessing the same. The further case of the defendant is that Sheema Rani Dey, daughter of Rabindra Kumar Dey also converted to Muslim and married a Muslim man. The plaintiff Arati Bala Dey died and her unmarried daughter Shipra Rani Dey was substituted as plaintiff in the suit in her place but substituted plaintiff is not legally entitled to get any saham in the present suit. Further case of the defendant is that he embraced Islam religion voluntarily on 05.07.1999 and changed his name Md. Saiful Islam, married Rojina Akhter on 30.09.1999 and living in his Paternal house with family situated in khatian No.253, Plot no.121; that although present B. S. D. P. Khatian No.350 was recorded in his name for 01.64 acres of land but he has been in possession of  $2.40\frac{1}{2}$  acres; that on the other hand, since he is not the owner of the suit khatian, his name was not recorded in the present khatian; that as per Hindu law, when a son acquired property by inheritance from his father and latter changed religion, he will not be deprived from his father's property. Thus there is no legal bar for defendant no.1 for getting saham in the property left by his deceased father, Rabindra Kumar Dey. With these averments, the defendant no. 1 prayed for dismissal of the suit and claimed saham of  $2.40\frac{1}{2}$  acres in the suit khatians.

5. The defendant nos. 2 and 21 contested the suit by filing separate written statement. The defendant no.2 Rustom Ali claimed saham in 0.36 acres by way of registered Ewaz Deed No.6119 dated 23.11.2010 with the defendant no.1. The Added-defendant no. 21, Abdul Malek claimed 0.41 decimals of land in suit plot no.121 by purchases from Prodip Kumar Dey and defendant no.1.

6. The trial court framed the following issues:

1. Whether the plaintiff Arati Bala Dey inherited from her deceased husband Rabindra Kumar Dey?
2. Whether the substituted plaintiff Sipra Rani Dey is entitled to inherit of her deceased father and mother?
3. Whether the plaintiffs are entitled to a decree for partition as prayed for?

7. In the suit the plaintiff examined only one witness as P.W-1 and the documents produced which were marked as Exhibits 1 and 2. On the other hand, the defendant no.1 examined only one witness as D.W.1 and produced the documents which were marked as Exhibits Ka-Jha. The defendant nos. 2 and 21 did not produce any oral or documentary evidence.

8. The trial court after considering the oral and documentary evidences produced by the parties decreed the suit in part for  $1.60\frac{1}{3}$  acres land on contest in preliminary form against the defendant no.1 and ex-parte against other defendants without cost by judgment and decree dated 23.04.2012.

9. Being aggrieved by and dissatisfied with the impugned judgment and decree dated 23.04.2012 the defendant no.1, Probir Kumar Dey preferred this appeal.

10. Mr. N. K. Shaha, the learned Advocate on behalf of the defendant nos.1 and 2 appellants submits that Hindu widow can not inherit the property of her husband since the

widow gets only life time interest. He further submits that intestate succession the property of male and female Hindus is governed by the Hindu Succession Act, 1956 and same is applicable in the present suit. He next submits that the defendant no.1 converted to Muslim from Hindu after death of his father and such conversion is no ground for exclusion of inheritance under Section 23 and 26 of the said Act. In this respect reference was made to the decision reported in (1911) ILR 33, Allahabad 356. He also submits that Arati Bala Dey earlier filed a suit wherein in the plaint it was stated that Probir and Prodip got 8(eight) annas each of the property of Rabindra Kumar Dey. So, Arati Bala Dey can not claim share of Rabindra Kumer Dey. He finally submits that Arati Bala Dey and after her death Sipra Rani Dey can not inherit the property of Rabindra Kumar Dey.

11. Mr. Tusher Kanti Roy, the learned Advocate appearing for the plaintiff-respondent submits that the Hindu Succession Act, 1956 was enacted on 17.06.1956 in India and as such the provisions of the said Act have no manner of application in Bangladesh. He further submits the inheritance of Hindu women is governed by Hindu Women's Rights to Property Act, (XVIII of 1937) which is still in force in Bangladesh and not repealed by the Bangladesh Laws (Revision and Declaration) Act, 1973 as specified in the First Schedule under Article 2 of the Act, 1973 and will be applicable in the present suit. He by referring section 3(1) of the said Act submits that Rabindra Kumar Dey died on 5.10.1978 and his wife Arati Bala Dey entitled in respect of the property to the same share as of son. He next submits that Arati Bala Dey as widow can file a partition suit. After death of Arati Bala Dey on 24.08.2008 the property which she inherited from her husband Rabindra Kumar Dey the same will be inherited by the next heir of the person from whom she inherited. The only son Probir Kumer Dey, defendant no. 1 was alive at the time of death of Arati Bala Dey but since the defendant no.1 converted to Muslim in the year 1999 and same is a ground of forfeiture of property and exclusion from inheritance as the son had changed his religion. He finally submits the substituted plaintiff, Sipra Rani Dey, the unmarried daughter of deceased Rabindra Kumar Dey as next heir is entitled to inherit the property and as such Shipra Rani Dey rightly got  $1.60\frac{1}{3}$  decimals of land and there is no illegality in passing the impugned judgment and decree passed by the learned Joint District Judge.

12. Heard the learned lawyers of respective parties. Perused the oral and documentary evidences and materials on record and the relevant provisions of the Hindu law.

13. Admittedly, the suit property measuring an area of 4.81 decimals belonged to Rabindra Kumar Dey and he died on 05.10.1978 leaving behind wife Arati Bala Dey, two sons namely, Probir Kumar Dey, defendant no.1 and Prodip Kumar Dey and four daughters namely, Mira Bala Dey, Ira Rani Dey, Sheema Rani Dey and Sipra Rani Dey. Prodip died leaving behind mother, Arati Bala Dey, brother Probir and four sisters. Probir converted to Muslim from Hindu in the year 1999. Among four daughters three daughters namely, Mira Bala Dey, Ira Rani Dey, Sheema Rani Dey were married and also converted to Muslim.

14. The positive case of the plaintiff is that after death of Rabindra Kumar Dey, Arati Bala Dey inherited the same share as a son in respect of property of Rabindra Kumer Dey. In this way she inherited  $\frac{1}{3}$  share i.e.  $1.60\frac{1}{3}$  decimal out of total 4.81 decimals of land. After death of Arati Bala Dey on 24.08.2008, the property was passed to the next heir Shipra Rani Dey, unmarried daughter of Rabindra Kumar Dey. The further assertion of the plaintiff is that at the time of death of Arati Bala Day, one son Probir, the defendant no.1, one unmarried

daughter Shipra Rani Dey and other married daughters were alive. But son Probir converted to Muslim in the year 1999 and thereby excluded to inherit the property of Rabindra Kumar Dey after conversion. Further according to Hindu law unmarried daughter, Shipra Rani Dey will inherit the same as next heir of Rabindra Kumar Dey from whom Arati Bala Dey got it for her life time interest.

15. The defendant no-1 mainly contended that Arati Bala or after her death the unmarried daughter Shipra Rani Dey did not inherit the property of Rabindra Kumer Dey as per Hindu Succession Act, 1956. Though Probir became a Muslim, he did not forfeit his interest and exclusion from inheritance from the property of his deceased father, Rabindra Kumer Dey by reason of his conversion to Muslim.

16. The learned Advocate for the defendant no.1 by referring the Hindu Succession Act, 1956 submits that Arati Bala Dey as widow or after her death unmarried daughter Shipra Rani Dey is not entitled to inherit the property left by Rabindra Kumer Dey. We have carefully examined the Hindu Succession Act, 1956. The aforesaid Act was enacted on 17.06.1956 by parliament in the seventh year of the Republic of India. No where in this Act it was stated that it extends to the whole of Pakistan and after libration the word 'Bangladesh' was substituted and as such the provisions of the said Act has no manner of application in the present case. In support of this he relied on the decision of the *Privy Council in the case of Gobind Krishna Narain and another versus Khunni Lal reported in (1911) ILR 33 Allahabad 35*. The cited case decided on a different state of facts, law and were distinguishable from the present case. In our opinion, this decision does not support the contention of Mr. N.K. Shaha.

17. In paragraph no. 6 (ka) of the written statement filed by the defendant no.1 it was stated that Arati Bala Dey on behalf of her minor son Probir Kumar Dey, the defendant no.1 herein filed Title Suit No. 11 of 1990 for permanent injunction and in the plaint it was stated that Probir Kumar Dey and Prodip Kumer Dey got  $2.40 \frac{1}{2}$  decimals of land each left by their deceased father. That suit was decreed and also upheld in appeal. But now the learned Advocate of the defendant no.1 submits Arati Bala Dey can not claim that she will get a saham by inheritance on the property left by Rabindra Kumer Dey. On perusal Exhibit Um-Um (2) series it appears that the said suit was filed for permanent injunction filed by Arathi Bala Dey on behalf of his minor son Probir Kumer Dey and same was decreed ex-parte. There is no evidence on record to show that any appeal was filed against the said ex-parte decree or the said ex-parte decree was set aside. Since the issues, subject matter and the parties of the said suit are not same, we find there is no legal bar for Arati Bala Dey to claim a saham in the property left by her husband and legally entitled to file the present suit for partition.

18. Let us now consider whether a Hindu widow is entitled to get the same share as a son. In this connection reference may be made to section 3 of the Hindu Women's Rights to Property Act, 1937 (XVIII of 1937). Sub section (1) of section 3 of the said Act says that when a Hindu governed by the Daya Bagha School of Hindu Law dies intestate leaving any property dies, his widow, shall, subject to the provisions of sub-section(3), be entitled to the same share as a sons. Sub-section (3) of section 3 of the said Act further says that any interest devolving on a Hindu widow shall be the limited interest known as a Hindu Woman's estate,

but she shall have the same right of claiming partition as a male owner. Further sub-section (2) of section 1 of the said Act stipulates that it extends to the whole of Bangladesh.

19. Thus from reading of the aforesaid provisions of sub-sections (1) and (3) of the Hindu Women's Rights to Property Act, 1937 it is clear that the widow during the period of her life time she became complete owner and co-sharer of the property and this sub-section 3(3) has the effect of putting the widow in the same position as a son in the matter of claiming partition and consequently having the right to claim partition filed the present suit. Thus Arati Bala Dey as heirs of Rabindra Kumar Dey shall get  $\frac{1}{3}$  rd share =  $1.60\frac{1}{3}$  decimals out of total 4.81 decimals.

20. The plaintiff alleged that Prodir Kumar Dey died unmarried leaving behind Arati Bala Dey as heir and since Prodir by this time change religion converted to Muslim and exclusion of inheritance from the property of his deceased father. The contesting defendant no.1 alleged that Prodir sold out his shares during his life time. The learned trial court in its judgment found that Prodir sold out his shares to different people and nothing was remained. The defendants did not file appeal or cross objection against those findings. So, the defendants can not raise this issue in the present appeal.

21. Now, the question may arise whether the substituted-plaintiff Shipra Rani, unmarried daughter of Rabindra Kumar Dey is entitled to inherit the property of Arati Bala Dey which Arati Bala got for life time interest from her husband, Rabindra Kumar Dey.

22. In Commentaries 168(4) of Mulla's Principles of Hindu law speaks every female whether she is a widow, who succeeds as heirs to the property of male, takes only a limited estate in the property inherited by her, and at her death the property passes not to her heir, but to the next heir of the male from whom she inherited it. So, after the death of Arati Bala, her inherited property will pass to the next heirs of original owner Rabindra Kumar Dey. At the time of death of Arati Bala Rabindra Kumar Dey had one son, defendant no.1, one unmarried daughter i.e. the plaintiff Sipra Rani Dey and other three married daughters. Admittedly, son Prodir Kumar Dey, defendant no.1 converted to Muslim in the year 1999. Hindu law does not apply where a person enters into a religious order renouncing all worldly affairs, his action is tantamount to Civil death, and it excludes him altogether from inheritance and from a share on partition. So, conversion from the Hindu to the Mahomedan faith by the defendant no.1 Prodir debarred him from inheriting the property of his father at the time of opening the inheritance on 24.08.2008 when Arati Bala Dey died. It is pertinent to note that Hindu law is religious law, the right to property is made by that law dependent upon the observance of the tenants of that faith. Consequently, a lapse from orthodox practices of Hinduism would under that law entail forfeiture of the caste and all rights to property and inheritance. Renouncement of religion has a disability, but after the passing of the Caste Disability Removal Act, 1850 (Act XXI of 1950), change of religion is no ground of exclusion of inheritance. But after the repealing of the Act XXI of 1850 by the Bangladesh Laws (Revision and Declaration Act, 1973 (Act No. VIII of 1973) the persons converts into another religion are now forfeited from the inheritance and from the joint family property and fathers property. It will not be out of place to mention that when a Hindu adopting by the Mahomedan faith, from the moment of

this conversion, by that acts affects all the property he acquires subsequently to it, so to render it subject to be Muslim law of inheritance. Commentaries 43(5) of the aforesaid Book states As between daughters the inheritance goes, first, to the unmarried daughters. As already observed above, Shipra Rani Dey was only unmarried daughter of Rabindra Kumar Dey, who was alive at the time of death of Arati Bala Dey on 24.08.2008. So, Sipra Rani Dey as the only unmarried daughter of Rabindra Kumar Dey will get  $1.60\frac{1}{3}$  decimals of land which was passed to Rabindra Kumar Dey due to demise of his wife, Arati Bala Dey.

23. It is pertinent to mentioned that Probir, son of Rabindra Kumar Dey got  $\frac{1}{3}$  of 4.81 i.e.  $1.60\frac{1}{3}$  decimals of land at the death of Rabindra Kumar Dey on 05.10.1978 when he was Hindu. The defendant no.1 also filed an application for saham and paid court fee on 27.08.2012 which was kept with the record. So, the defendant no.1 will get a saham for  $1.60\frac{1}{3}$  decimals of land and not  $2.40\frac{1}{2}$  acres as claimed by him in the present suit.

24. It appears from the record that as per judgment and decree the plaintiff prayed for commission to make partition in respect of her shares allotted by court on 04.11.2012. Accordingly, Advocate Commissioner was appointed and after Commission learned Advocate Commissioner submitted his report. Subsequently, all proceedings of the suit was stayed since the present appeal was filed against the impugned judgment and decree dated 23.09.2012.

25. Having regard to facts and circumstances, we are of the view that trial court on proper consideration and appreciation of the evidence and materials on record rightly decreed the suit in part on finding that the original plaintiff, Arati Rani Bala Dey wife of Rabindra Kumar Dey became owner and co-sharer of the property and had right to file the suit for partition during her life time. After her death, her share was passed to Rabindra Kumar Dey from whom she inherited and Shipra Rani Dey as only unmarried daughter of Rabindra Kumar Dey will get the same from Rabindra Kumar Dey as next heir since the only son Probir Kumar Dey, who was alive but converted to Muslim earlier before opening the inheritance of Rabindra Kumar Dey on the property which was passed from Arati Bala Dey at her death on 24.04.2008.

26. Thus we find no merit in this appeal.

27. In the result, the appeal is dismissed and the impugned judgment and decree dated 23.09.2012 is affirmed.

28. Send down the lower court records along with a copy of this judgment at once.