

Satchidananda Samanta Vs. Ranjan Kumar Basu and Others

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Court : Kolkata

Decided On : Oct-10-1991

Reported in : AIR1992Cal222,(1992)1CALLT463(HC)

Judge : Monoranjan Mallick and; Manabendra Nath Roy, JJ.

Acts : [Partnership Act, 1932](#) - Section 9;; West Bengal Cinemas (Regulations) Act, 1954 - Sections 3, 6 and 9;; West Bengal Cinemas (Regulations) Rules, 1954 - Rule 19, 19(1) and (2);; West Bengal Cinema (Regulations of Public Exhibition) Rules, 1956 - Rules 8, 9 and 19;; [Indian Contract Act, 1872](#) - Sections 23 and 24

Appeal No. : F.As. Nos. 21 and 22 of 1976 and T.A. Nos. 135 and 183 of 1975

Appellant : Satchidananda Samanta

Respondent : Ranjan Kumar Basu and Others

Advocate for Def. : M/s. Sakti Nath Mukherjee, ;Pradipta Roy, ;MihirKr. Das, ;Mr. S.P. Roy Choudhary, ;Mr. Bijon Mazumdar, ;Mr. Sita Ram Bhattacharya and ;Mr. Satish Ch. Das, Advs.

Advocate for Pet/Ap. : Mr. Abhijit Banerjee and ;Mr. Ashok Kumar Mukherjee, Advs.

Judgement :

ORDER

Monoranjan Mallick, J.

1. The Subordinate Judge, 10th Court, Alipore heard the T. S. No. 1/5 renumbered as T. S. 49/73 together with T. S. No. 57/61, T. S. 32/62 and T. S. No. 103/65 abalogously under order of the High Court, Calcutta and have delivered a common judgment and decree dated 18th December, 1974.

2. Being aggrieved Satchidananda Samanta, the plaintiff in T.S. No. 1 / 54 has filed F.A. No. 21/76, Ranjan Bose, the plaintiff in T.S. No. 57/61 has filed F.A. No. 22/76 against the judgment and decree passed in T.S. No. 103/65, Achudananda Samanta, the plaintiff of that suit preferred the T.A. No. 183/75 and Satchidananda Samanta preferred T.A. No. 135/75 in the Court of the Ld. District Judge, Alipore. They have now been transferred to High Court, Calcutta so that F.A. No. 21/76 and F.A. No. 22/76 can be heard analogously with T.A. No. 135/75 and T.A.No. 183/75. Be it noted that nobody has preferred any appeal against the judgment and decree passed in T.S. No. 32/62.

3. The facts of the above Titles Suits against which the above appeals have arisen may be briefly stated as follows:--

Satchidananda Samanta has filed T,S. No. 1/54 which has been renumbered as T.S. No. 49/73. Satchidananda Samanta filed this suit for partition and accounts against Ranjan Kumar Bose, Smt. Khirodamoyee Dassi, his mother, since deceased and Achudananda Samanta, his elder brother. Subsequently, Bishnu Pada Pramanik, Abdul Latif and others were added as defendants of that suit. The subject matter of the suit is 41 cents of land in Dag No. 624 of Khatian No. 231 of Mouja -- Joy Chandipur, P. S. -- Budge Budge with a pucca structure being a Cinema House thereon. Subsequently, 14 cents of land in Dag No. 621 under Khatian No. 286 of the same Mouja has also been included in the schedule of the property. The plaintiff has alleged that the suit property along with other properties belonged to their father, Gopi Nath Samanta who died in Jaistya, 1341 B. S. leaving Satchidananda and Achutananda, the two sons and widow, Khirodamoye as heirs and legal representatives. They remained in joined possession of the properties including the suit property. Before his death Gopinath stacked huge quantities of bricks and kept in stock timbers, door, windows, window frames etc.

With the consent of Satchidananda, Achutananda started construction of a Cinema House on Dag No. 624 utilising the bricks and timber materials stacked by their father. As Satchidananda has not been given the accounts in respect of the income of the said cinema house in spite of repeated demands, he has brought this suit for partition claiming 8 annas share in the lands and structures and the business of the cinema house. He has impleaded Sri Ranjan Bose as the plaintiff has come to know that Ranjan Bose has purchased 6 annas share of the land as well as the cinema house Achutananda. With these allegations the above suit for partition and accounts have been filed. As in the written statement of Ranjan, it was disclosed that the added defendants, Bishnu Pada Pramanik and Abdul Latif were brought in by Achutananda as partners to the cinema business, Bishni Pada and AbdulLatif have been added and one Keshab Chandra Rakshit has also been added as defendants Nos.2(Ka), 2(Kha) and 2(Ga). Achutananda having died during the pendency of the suit has been substituted by his heirs and legal representatives. The suit was contested by Ranjan Kumar Bose, Achutananda Samanta and also by Bishnu Pada and Abdul Latif. Ranjan Bose and Achudananda Samanta filed separate written statement and Bishnu Pada and Abdul Latif have filed a joint written statement. The written statement of Ranjan, Bishnu and Latif are similar in nature and may be stated as follows:--

Satchidananda Samanta and Achutananda Samanta after the death of their father got the joint properties partitioned by metes and bounds and the disputed plots fell in the share of Achutananda. He alone made construction on Plot No. 624 and started cinema business with his own money. As he ran short of fund, he was forced to borrow Rs. 45,000/- in cash from Ranjan Bose in various instalments and sold 6 annas share of the disputed plot, cinema house and business to him for consideration of Rs.20,000/-. Bishnu Pada and Abdul Latif also jointly advanced to Rs. 65,000/- to Achutananda and they became partners of the said business each having 4 annas share therein. There was troubles amongst the partners over the profits and division of the cinema business and Bishnu Pada filed a Criminal Case against Achutananda for criminal breach of trust and a search warrant issued against him. Achuta then filed T. S. No. 78/53, which was disposed of and compromised. It was agreed upon in that compromise decree that Bishnu and Latif would have 4 annas share in the business. In the meantime Ranjan also filed a

suit being T. S. No. 181/53 against Achutananda, Bishnu, Latif and several others for declaration of 6 annas share in the lands, cinema structures and cinema business. During the pendency of the suit Ranjan, Bishnu, Latif and Achutananda entered into a Partnership business and a Partnership Deed was executed by and between the parties. It was agreed in that Agreement that Ranjan had 6 annas, Bishnu and Latif had each 4 annas and Achutananda had 2 annas share in the Partnership business. It was further agreed that Aswini Kumar Pramanik, the brother of Bishnu would act as Manager of the Partnership business. Aswini Kumar as Manager looked after the said business. Satchidananda having no manner of title and possession in the property in suit. The present suit is liable to be dismissed, Achutananda in his written statement stated that after their father's death he and Satchidananda decided to get their joint properties partitioned and appointed two Arbitrators and the arbitrators on 23rd October, 1935 get their award and a document of partition was prepared in terms thereof. Two brothers and their mother got exclusively allotment of their properties, that the disputed lands fell in the allotment of Achutananda who at his own cost raised structures on the disputed plot for starting the cinema house and after taking licence actually started the cinema house, that he purchased the Talkie machine at his own cost and also purchased the other furnitures and articles for the purpose of said business. He denies that Satchidananda had anything to do for construction of the cinema house or running of the said business. He, however, claims that he is the exclusive owner of the structure and the sole proprietor of the business and denies that Ranjan has any share or that Bishnu and Latif have been inducted as partners in the said business.

4. T. S. No. 58/58 which has been renumbered as T. S. No. 103/65 has been filed by Achutananda Samanta as plaintiff against Ranjan, Bishnu, Latif. Aswini and two others as defendants. In that suit he prays for a declaration that he is the exclusive owner of the cinema house and the business. In that suit he has reiterated that he has constructed the cinema house and started running the same on taking licence from the District Magistrate, 24-Parganas on 19th April, 1952. His case is that at the time of opening the cinema some brokers brought Ranjan to Achutananda who being a very simple and honest man could not understand the real intention of Ranjan and took some loan from Ranjan and on good faith signed some blank

papers and cartridge papers thinking that some applications were being written on them, that Bishnu and Latif were friends of Ranjan and Aswini was the brother of Bishnu and all of them in collusion with each other for the purpose of defrauding Achutananda induced him to execute a Deed in favour of Ranjan which they did not allow to read the contents thereof and the said Deed was later found to be a kot kobala of Rs. 9000/-, but it was a pure and simple mortgage loan for Rs. 6000/- which amount was repaid in time, that Achutananda had no intention to execute a Deed of Conveyance in favour of Ranjan for Rs. 90000/-, that then again Ranjan with the help of other defendant has fraudulently induced Satchidananda to sign on a Deed on 14th July, 1952 without giving any single copper coin as consideration and Satchidananda subsequently came to know that a kot kobala was fraudulently written out by the writer in employment of Ranjan in respect of 6 annas share in the land of Achutananda for the alleged consideration of Rs. 20,000/-, that the said Kobala is false, fraudulent without consideration and void, that Bishnu and Latif fabricated some documents alleged to be a partnership at will which was duly Cancelled by the Registrar of Assurances on 6th April, 1953 and the said two partners wanted to terrorise the plaintiff by starting a false criminal case and the plaintiff had to institute a suit against them, that defendant- No. 5, Keshab Chandra Bakshit falsely claimed some share in cinema business and filed T.S. No. 23/56 in the 3rd Court of Munsif, Ali-pore, but none of the defendants has any manner or right title and interest in the property as well as in the cinema structure and business. It is further contended that Ranjan has filed a false suit being T.S. No. 181/53 against the plaintiff Achutananda making Bishnu, Latif and Keshab as parties thereto in the 7th Court of Subordinate Judge, Alipore for a declaration of his 6 annas share in the property in the self-same property and the cinema business on the basis of the fictitious and fraudulent Sale Deed dated 14th July, 1952. Ranjan in collusion with the other documents and with fraudulent motive told Achutananda that they would pay him Rs. 10,000/- for carrying on the business and asked him to sign documents at their bidding, that Achutananda threatened with dire consequences and was compelled to sign the two Deeds on 22nd December, 1953 and 28th December, 1953 which he later learnt to be the alleged special Agreement and a Power of Attorney, that immediately thereafter Achutananda revoked the Power of Attorney by sending a notice by registered

post on 16th February, 1954 and Filed a suit being T.S. No. 60/54 in the 3rd Court of Munsif at Alipore against Ranjan, Bishnu and Latif that those three persons filed a petition on 3rd March, 1954 along with a manufactured and fraudulently got up draft Solanama praying for recording the same in T.S. No. 181/53, that the alleged draft was never consented to or signed by Achudananda who had never any knowledge of the same, that on 15th February, 1955 the terms of the Solanama was recorded by the Court, that Achudananda went in appeal before the High Court but was unsuccessful there and thereafter the present T.S. No. 58/58 has been filed for declaration of title as well as for the further declaration that the draft Solanama dated 28th December, 1953 is fraudulent and also for a declaration that the special Agreement dated 22nd December, 1953 the alleged Power of Attorney dated 28th December, 1953 and the alleged Kobala dated 14th February, 1952 are fraudulent and void. Defendants, Ranjan, Bishnu, Latif and Aswini being the defendants Nos. 1 to 4 have filed joint written statement. They deny the claim of the plaintiff Achudananda that he is the exclusive owner of the cinema house and the business. They claim that the disputed cinema business is a Partnership business in which the plaintiff has 2 annas share, defendant Ranjan has 6 annas share and the defendants Nos. 2 and 3 Bishnu and Latif has 2 annas each. They also deny the Sale Deed dated 14th February, 1952 to be fraudulent and claim that the same is a valid document executed by the plaintiff on taking due consideration. They also deny that they in collusion with each other fraudulently got the documents dated 22nd December, 1953 and 28th December, 1953 executed through Achudananda. Defendant No. 5, KeshabChandra Rakshit in his written statement claimed 8 annas share in the partnership business. The defendant No. 6 Satchida-nanda, the brother of Achudananda and the plaintiff in T.S. No. 1/54 has also contested that suit claiming that the property and cinema structure is the joint property of the plaintiff and the defendant Achudananda's statement that he is the exclusive owner of the property is not correct and that for partition of his 8 annas share he has filed T.S. No. 1/54,

5. T.S. No. 57/61 has been instituted by Rajan Bose against Achudananda, Bishnu, Abdul, Aswini and Sachidananda for a declaration that is the sole proprietor of the cinema business and also for a declaration that the Partnership Deed dated 26th December, 1952 along with the Agreement dated 22nd

December, 1953 and the Power of Attorney dated 28th December, 1953 and the compromise decree in T.S. No. 181 / 55 in the 7th Court of the Sub-ordinate Judge, Alipore are all vitiated by fraud, misrepresentation, undue influence and coercion. In that suit Ranjan has made out a completely different case from that he made in the written statement in T. S. No. 1/54 and T.S. No. 58/ 58 and for the first time alleged that he has come to know recently that Bishnu and Latif exercised fraud and undue influence upon Achundananda in causing him to sign the Agreement dated 22nd December, 1953, the compromise in the T.S. No. 181/53 and the Power of Attorney dated 28th December, 1953. He also claimed that if you are ware of this fraud he would not have being a party to the Agreement dated 22nd December, 1953 and to the compromise in the T. S. No. 181/53 and the Power of Attorney dated 28th December, 1953. He also claimed that he invested a large sums of money and diverted his entire energy to the cinema business without any remuneration or profit of his own, that Bishnu and Latif never claimed or took any share in the business and Achudananda later on by acts or conducts withdrew, retired and resigned from the business by relinquishing and repudiating his interest or by abandonment and Ranjan has, thus, become the sole proprietor of the cinema business known as Bina Cinema. Alternatively he has prayed that if it is found that the said business is a partnership business of the plaintiff and all or some of the defendants Nos. 1 to 3, then a decree (sic) of the said partnership business may be passed.

6. Achudananda by filing a separate written statement has clearly denied all the allegations and has reiterated all the allegations made by him in the T. S. No. 58/58 and claims that he is the exclusive owner of the suit property as well as the cinema business of Bina Cinema. Bishnu and Latif have reiterated in their joint written statement, the statements made by them in the written statement in Suit No. 1 / 54 and 58/ 58. They also deny that Sachindananda has any share in the suit property or the cinema house. The defendant No. 5 Satchidnanda has filed a separate written statement contesting the suit and in the written statement he has reiterated the allegations made by them in T. S. No. 1/54. The last suit in T. S. No. 32/62 brought by Bishnu and Latif against Ranjan, Achudananda and Aswini praying for accounts regarding the assets and liabilities of the Bina Cinema business claiming to be the partners of the said busines. They alleged that in

terms of the Agreement dated 22nd December, 1953 a irrevocable Power of Attorney was duly executed and registered on 28th December, 1953 and Aswini ran the cinema business on behalf of all the partners and took out the licence from the proper authority. That it was agreed between Bishnu, Latif and Ranjan that all moneys collected would be sent to Ranjan by Aswini and Ranjan would invest the same in a schedule Bank in the name of the firm and all day to day expenses would be borne by Ranjan out of the said money and the accounts would be submitted by Ranjan periodically, that Achudananda did not co-operate with other partners from the very beginning that between May, 1958 and 1961 about Rs. 3,00,000/- were deposited by Ranjan but in spite of repeated demands by the plaintiff Ranjan failed to render accounts even though on 31st March, 1961, he acknowledged his liability to render accounts but ultimately towards the end of July, 1961 he changed his mind and informed the partners that the rendition of the partnership accounts was not feasible and that, they brought this suit for accounts of all the moneys received by Ranjan Bose from the constituted Attorney, Aswini from May, 1953 to June, 1961. Achudananda in his written statement has reiterated his claim in T. S. No. 58/58 and has denied that the plaintiffs are the partners of Bina Cinema and are entitled to any accounts. Ranjan in his written statement also denied that the plaintiffs had any share in the cinema business of Bina cinema as partners. Aswini in his written statement, however, supported the case of the plaintiff and stated that the business under his control ran from May, 1958 to July, 1961 and he sent all daily collection to defendant No. 3, Ranjan Bose amounting to Rs. 3,65,000/-more or less.

7. Originally T. S. No. 1/54 was heard separately and was dismissed by the Ld. Subordinate Judge, Alipore on 14th July, 1958. Thereafter in appeal the Division Bench of the High Court has observed that as questions of title and other material issues which are awaiting decision in the other suits now remain in pending, it will be just and proper that the judgment and decree appealed from be set aside and the suit be tried analogously with the other suits in the same Court where the other suits are now pending. Thereafter, all the above suits have been tried analogously by the Ld. Sub-ordinate Judge, 10th Court, Alipore. In T. S. No. 1/54 separate evidence was led by both the parties and in the other suits tried analogously evidence was led also by both the parties.

The Ld. Trial Judge has considered all the evidence in all these suits in disposing of these four suits. He has accepted the case of Satchidananda that the suit property has not been partitioned between Satchidananda and Achutananda. He has also found that the major portion of the money for the purpose of the cinema house namely Bina Cinema house constructed on the suit property was borne by Achutananda, but the bricks and the other wooden materials stacked by Gopinath were also utilised for the construction of cinema house and Satchidananda was also contributed to some extent to the construction of cinema house. But as the major portion of the money was contributed by Achutananda, he would get 2/3rd share and the plaintiff, Satchidananda would get 1/3rd share. He has, however, found from the evidence that Ranjan has purchased 6 annas share in the property and Bishnu and Latif have also 4 annas share in the cinema business. Consequently he has declared that Ranjan has 6 annas share in the cinema business, Latif and Bishnu have 4 annas share in the land and business, Achutananda has 2/3rd share of 2 annas and Satchidananda 1/3rd share of 2 annas and the suit land and the business. He also granted the plaintiff the decree for accounts as prayed for. He has also given the parties six months' time from date to effect partition by metes and bounds and also effect accounts amicably, failing which the Partition Commissioner and the Accounts Commissioner will be appointed at the instance of any party to the suit. T. S. No. 58/58 renumbered as 103/66 has also been decreed in part declaring share of Achutananda therein to the extent of 2/3rd of 2 annas share in the land and the cinema business. All other prayers in the said suit have been refused. T. S. No. 57/61 has also been decreed in part in preliminary form dissolving the partnership business named Bina Cinema business of which Achutananda, Satchidananda, Ranjan, Bishnu and Latif were partners. He directed the parties six months' time for settling the accounts amicably, failing which an Accounts Commissioner would be appointed at the instance of any party to the suit. The Ld. Trial Judge has also indicated that Achutananda will render accounts for the period from 1st August, 1952 up to the date of his dispossession by the Receivers as admitted by him and Ranjan will furnish accounts for the period he has managed the business as admitted by him. All other prayers have been refused. T. S. No. 32/62 has also been decreed on contest in preliminary form against all the defendants. The parties are given six

months' time from date for settling their accounts amicably, failing which an Accounts Commissioner will be appointed at the instance of any party to the suit. The Ld. Trial Judge has also indicated that a Joint Accounts Commissioner will be appointed in T.S. No. 57/61 and T. S. No. 32/62 as the accounting relates to the self-same business.

8. Being aggrieved Satchidananda Samanta, the plaintiff in T.S. No. 1/54 has preferred F. A. No. 21/76. The contentions of the appellant are mainly as follows:--

1. The Ld. Judge having found that the suit property has not been partitioned and this is a joint property of the plaintiff, Satchidananda Samanta and having held Ranjan Bose to have acquired 6 annas share in the said property ought to have granted the plaintiff the decree for partition in respect of plaintiffs 8 annas share, that he erroneously held Bishnu and Latif to have acquired 4 annas share in the land and the business.

2. Bishnu and Latif have been inducted as partners by his brother. He has no connection with the said partnership business and those persons might have share in the partnership business as partners but the Ld. Trial Judge committed a great error by holding that they have 4 annas share each in the land as well as the cinema business of Bina Cinema.

3. There being no sufficient evidence that Achudananda Samanta contributed major portion in erecting the structure of the cinema house and having found to have sold the 6 annas share in the property to Ranjan and also having procured money from other partners cannot claim that he would get 2/3rd share and the plaintiff would get 1/3rd share in the property F.A. No. 22/76 has also been filed by Satchidananda Samanta in which same points urged in F.A. No. 21/76 have been urged. Against the judgment and decree in T.S. No. 103/65 Satchidananda preferred T.A. No. 135/75 and Achudananda filed T.A. No. 183/75 before the District Judge, Alipore which have now been transferred to be disposed of analogously with F. A. Nos. 21 and 22/76 Satchidanandain T.A. No. 135/75 has also urged the same points urged in F.A. No. 21/76. Achudananda has in T. A. No. 183/ 75 has urged the following points:--

1. The Ld. Trial Judge failed to appreciate the evidence properly and ought to have held that the suit property has been partitioned between Satchidananda and Achudananda and has been allotted to him.

2. There was sufficient evidence to hold that it was Achudananda, who constructed the cinema building, took the licence from the District Magistrate, 24-Parganas and has been running the said business exclusively.

3. Ranjan, Bishnu and Latif by practising fraud, undue influence and coercion created some fictitious Sale Deed in favour of Ranjan in respect of 6 annas share and has also created some fictitious documents dated 22nd December, 1953 and the Power of Attorney dated 28th December, 1953 and the Ld. Trial Judge ought to have held that there was never any partnership business between Achudananda, Ranjan, Bishnu and Latif and he should have declared the exclusive share of Achudananda and the suit property as well as the cinema business and also declared the impugned Deeds as fraudulent and void.

9. All these appeals have been contested by Ranjan, Bishnu and Latif. Their contentions are that the Ld. Trial Judge should have held that the suit property has previously been partitioned and should have declared the share of Ranjan to the extent of 6 annas share, that of Bishnu and Latif to the extent of 4 annas share each and that of Achudananda to the extent of 2 annas share. It is also contended that even if it be conceded that the suit property have not been partitioned by metes and bounds but there are several other joint properties belonging to Achudananda which Satchidananda has disclosed in evidence and the Ld. Trial Judge should have dismissed the suit on the ground of partial partition.

10. We would, therefore, decide first as to whether the suit property was previously partitioned or not as alleged by the appellant, Achutanadana in T. A. No. 183/75. Satchidananda the appellant in F.A. No. 21/76, F. A. No. 22/76 and T. A. No. 125/75 has urged that the finding of the Ld. Trial Judge that the suit property has not been previously partitioned is a correct finding, but the shares declared by the Ld. Trial Judge have been assailed by him. According to the appellant Satchidananda the Ld. Trial Judge should have declared the 8 annas share of Satchidananda in the suit property on which the cinema house, BinaCinema

stands, that he should have declared the share of Ranjan Bose to the extent of 6 annas share by virtue of purchase of that share from Achutananda and remaining 2 annas share to Achutadanda.

11. Even though Ranjan, Bishnu and Latif did not prefer any appeal, they have also assailed the finding of the Ld. Trial Judge that the property has not been previously partitioned between Achutananda and Satchidananda. They have also taken the plea that even if the property is the joint property, Satchidananda and Achutananda admittedly had other joint properties and the T. S. No. 1/54 filed by Satchidananda only for partitioning the suit property is not maintainable and the suit is bad for partial partition.

12. The first point which we have to decide is whether the suit property has previously been partitioned by Achutananda and Satchidananda. The case of Achutananda in this respect is that after their father's death he and Satchidananda decided to get their joint properties and appointed two Arbitrators on 23rd October, 1935 got their award and a document of partition was prepared in terms thereof and in that document the two brothers and their mother got exclusive allotment of properties and that the suit land fell in his allotment who at his own costs raised structures on the disputed plot for starting the cinema house and after taking licence actually started running the cinema business. He also denies that Satchidananda had nothing anything -- Ed) to do with the construction of the cinema house or running of the said business. When admittedly the suit property was part of joint property inherited by Satchidananda, Achutananda, and their mother, then the onus is heavily upon the person who asserts that there was a previous partition is to prove the same to the satisfaction of the Court. In this respect the evidence of Achutananda Samanta as D.W. 5 in T. S. No. 1/54 has to be looked into. In the examination-in-chief he has stated that after his father's death in 1941 there was a Salish and there was amicable partition in 1342 B. S. and the suit property fell to his share exclusively and since then he got separate possession of their allotments. He has further stated that he got lands of Khatian Nos. 321, 286 and 169 and that the suit property appertains to Khatian Nos. 321 and 286. His further evidence is that his brother got 85 decimal of lands at Banjalarhia, 5 Bighas at Avirampur and a shop room appertaining to Khatian No.

168 of Mouja-- Joychandrapur. However, this evidence contradicts the statement made in the written statement of that suit being T. S. No. 1/54, that two Arbitrators were appointed to partition the suit property. The name of those two Arbitrators have been mentioned in paragraph 10 of the written statement, as Rangalal Bhuja and Birendra Kumar Basu. In the evidence Achutananda did not make any whisper about the two Arbitrators who according to him were entrusted in partitioning of the property. No document relating to the amicable partition is referred to paragraph 10 of the written statement of Achutananda has been produced, Satchidananda in his deposition as P.W. 5 has categorically asserted that their paternal properties were never partitioned. It is true that Achutananda in his evidence claimed that as a result of some Salish there was amicable partition in property in 1342 B.S. But in cross-examination Achutananda has made a damaging statement which clearly blows out his story of previous partition. He states in cross-examination as follows:--

'The paddy lands and/or other lands have not been partitioned. Only the disputed plots have been partitioned.'

Moreover, in cross-examination he has conceded that he told the plaintiff (Satchidananda Samanta) that he would start the cinema business and Satchidananda did not object. If the properties were really partitioned and came to the exclusive share of Achutananda, then there was no question of Achutananda taking the plaintiffs permission before starting a cinema business by raising a cinema house on the suit property. It is only when one of the co-sharers wants to make any construction on the joint property that he has to seek such permission, otherwise the other co-sharer may raise objection, that is a clear circumstance negating the plea, of previous partition.

13. The evidence of other witnesses on the story of previous partition is also highly unsatisfactory. Nirode Behari Sarkar in his evidence has stated that once there was a talk of partition between the two Samanta brothers and so far as he knew the partition was effected. But his main evidence is to support the plaintiffs case that Satchidananda also was present when the cinema house was constructed and Satchidananda also used to take accommodation loan from him for making

payment to the masons and labourers engaged for the construction of * cinema house. In cross-examination he has not also been able to show as to whether other properties are separately possessed or jointly possessed by the two brothers. Therefore, the evidence of Nirode Behari Sarkar cannot be regarded as sufficient to prove the previous partition. The other evidence is that of Bishnu Pada Pramanik, who is D. W. 2 claims to have seen one Khata relating to partition, but no plot Nos. were given nor were any signatures of the plaintiff in that Khata. This evidence of Bishnu Pada Pramanik does not also corroborate the story of Achutananda. Achutananda does not claim that any Khata was prepared for partition. Bishnu also does not have any personal knowledge regarding previous partition. D.W. 3, Kumud Kumar Barui of T.S. No. 1/54 is to the effect that Achutananda alone paid rent for Khatian Nos. 321 and 286 from 1352 B.S. and Satchidananda for the lands of Khatian No. 898 of Mouja -- Banjalharia and Khatian No. 168 of Mouja -- Joychandrapur. He, however, admits that Dhakilas in respect of Khatian No. 321 the names of two brothers have not been written as Marfotdars. If really there was a partition and the mutation of the name of Achutananda in the landlord's Sherestha, then there is no reason as to why the name of both the brothers would continue to be shown in the Dhakilas. Even the municipal tax receipts (Exts. 1 and I(a)) in T. S. No. 1 / 54 the name of both the brothers are shown as assessee. On behalf of Achutananda the appellant in T. A. No. 183/75 as well as on behalf of the respondents of this appeal namely, Ranjan, Bishnu and Latif our attention has been drawn to the evidence of the plaintiffs, Satchidananda in T. S. No. 1/54 and it is submitted that the above evidence would clearly show that there was a previous partition. It is submitted that even though Satchidananda in his evidence claimed that there was no previous partition yet he has admitted that the lands of Khatian No. 898 of Banjalharia is possessed by him exclusively. He also admits that his father left one shop room of the main road which he now occupies alone and his brother alone occupies another shop room in the Bazar. It is also submitted that it was Achutananda who alone obtained sanction from the municipality for building the cinema house and alone obtained the licence from the District Magistrate to run the cinema business there. It is also urged that when the parties have been possessing the properties exclusively in separate allotments, then there is sufficient reason to hold that they were not

possessing by amicable arrangement but by virtue of separate allotment by amicable partition.

14. We have carefully considered the evidence of Satchidananda and that of Achutananda. As no other witness had any personal knowledge regarding whether the joint properties left by the father of Satchidananda and Achutananda were previously partitioned or not, we are of the view that the onus being upon Achutananda to prove that there was previous partition, he has failed to discharge the onus and the finding of the Ld. Trial Judge in this respect based on proper evidence cannot be assailed. It is well-settled that the co-sharers may by virtue of amicable arrangement possess the joint properties exclusively by virtue of amicable arrangement. What Satchidananda has admitted in his evidence regarding his exclusive possession of some of the joint properties is by virtue of such amicable arrangement. When Achutananda made out a case that two Arbitrators were appointed to amicable partition their properties in 1342 B.S. and the same was partitioned by those Arbitrator and separate allotments were given to him, Satchidananda and their mother yet in the evidence he has not been able to state anything as to what properties were allotted to their mother, which according to him, after the death of their mother would be equally divided between the two brothers. He has, however, said that some properties have been allotted to Satchidananda exclusively. Satchidananda had denied that fact. Satchidananda had admitted that their mother had several paternal properties. It is not at all probable that no document would be created to effect the partition of their properties. In that view the story of previous partition has been rightly disbelieved by the Ld. Trial Judge. The next point to be decided is whether Satchidananda is entitled to file this suit for partition only for a portion of the joint property. Before the Ld. Trial Judge the specific point was raised that the suit was bad for partial partition. In (We -- Ed) find from the evidence of plaintiff, Satchidananda both in the examination-in-chief as well as in cross-examination, that he has stated that both the brothers have other joint properties than the present suit properties. In examination-in-chief Satchidananda has stated that his father left considerable properties and there was no partition of said considerable properties. He has admitted that he has filed the suit for partition only in respect of plot No. 624 which is plot of the cinema site having an area of 41 cents and plot No. 621 being the

adjoining plot having an area of 14 cents. So, admittedly Satchidananda has not brought into the hotchpot of the suit all the joint properties left by their father. In cross-examination he also admitted that plot Nos. 622, 623 and 624 appertaining to one Khatian No. 321 are Ejmali but he has brought this suit only in respect of plot No. 624. But have not included plot Nos. 622 and 623 in this suit. He has conceded that plot No. 621 which is included in the schedule of the suit property appertains to Khatian No. 286 and plot No. 620 which also appertains to that Khatian had not been included. He has also conceded that the Khatian No. 898 Banjalarhia belonged to him and Achutananda, that land also had not been brought into hotchpot. Therefore, it is clear that save and except the suit properties on which the cinema house have been erected noother joint properties in which both the brothers have shared have not been included in this suit for partition. Then the question arises as to whether the suit is bad for partial partition or not. The Trial Judge has negatived this contention on the ground that in no other joint properties Ranjan Bose which according to plaintiff Satchidananda has 6 annas share has any interest. Therefore, there is no other joint immovable properties of the two brothers in which Ranjan Bose is interested. The Ld. Trial Judge, therefore, finds sufficient reason for not bringing the other joint properties into the present hotchpot. The reason that the Ld. Trial Judge assigns is that as Ranjan Bose is not interested in other joint properties, the plaintiff could bring a suit for partition only in respect of the suit properties in which all the three parties are interested and as in all other joint properties only Satchidananda and Achutananda are alone interested, the present suit would not fail for partial partition. We are of the view that the general principle is that a co-sharer filing a suit for partition against the other co-sharers have to bring all the joint properties into the hotchpot, failing which a suit may be dismissed on the ground of partial partition. In this case even the Ld. Trial Judge has come to the finding that the major portion of the construction of the cinema house was done at the cost of Achutananda. Even if the property was a joint property Satchidananda allowed Achutananda to erect a cinema house thereon. If all the joint properties are brought into hotchpot, then Achutananda having made considerable improvement in a portion of the joint property may legitimately claim that even if his contention that the suit property has not been previously partitioned is not acceptable, then the whole plot in suit

might be allotted to him. Proper equity in a suit for partition in that case will not be possible if all joint properties of Satchidananda and Achutananda are not brought into the hotchpot. Only because a portion of the share has been sold to Ranjan Bose, the Ld. Trial Judge should not have held that the frame of the suit is proper. In our view Satchidananda cannot file this suit for partition only in respect of the portion of the suit property in which the cinema house has been constructed leaving all other properties from out of the partition suit. For an equitable partition between the two brothers regard being had to the facts and circumstances disclosed in this case all the joint properties ought to have been brought into the hotchpot and the present suit in our view suffers from this defect of partial partition very badly as the major portion of the joint properties are left out of the partition suit. Even if it is true that Ranjan Bose is not interested in other properties but in order to effect an equitable partition between the two brothers it is necessary that all their joint properties ought to have been brought into the hotchpot.

15. In view of our above findings we are of the (opinion) that the present suit for partition of the suit for partition of the suit property is not maintainable. The plaintiff has also prayed for accounts in respect of the business of the cinema house which is being carried on the suit property.

16. The parties being governed by the Dayabhaga School of Hindu Law even if the suit for partition is held by us to be not maintainable yet if the said business cannot be held to be a joint family business, then the plaintiff even without filing the suit for partition may pray for accounts. So let us see whether the plaintiff cause can get the decree for amounts. It is the case of the plaintiff that the cinema house that has been constructed on the suit property has been done with the bricks that were stacked by their father. Gopi Nath Samanta and also the doors and windows were also those that were lying from before the lifetime of Gopi Nath. It is also his case that regarding the construction of the cinema house he contributed money for the same, and therefore, the said cinema business must be held to be a joint family business.

17. Mr. Banerjee appearing for the appellant, Satchidananda Samanta has submitted that he had no concern with the partnership business which his brother

Achutananda Samanta entered into with Ranjan Bose, Bishnupada Pramanik and Abdul Latif and he had no connection with the suit filed by Ranjan Bose and by Bishnupada Pramanik and Abdul Latif praying for accounts of the said partnership business on dissolution thereof and the Ld. trial Judge was not justified in directing him to render account to Ranjan Bose, Bishnupada Pramanik and Abdul Latif along with the said brother for the said partnership business and that part of the decree of the Ld. trial Judge is, therefore, erroneous. It is, however, submitted by Mr. Banerjee that he has no objection to that part of the decree of the Lt. trial Judge in which he has directed his brother to render accounts of the partnership business.

18. On behalf of both Achutananda Samanta and Ranjan Bose, Bishnupada Pramanick and Abdul Latif it is contended that Satchidananda Samanta had no connection with the cinema business. We have already indicated that it was their common case that the said suit property was exclusive property of Achutananda acquired by him by partition with his brother. That part of the case of the above parties has already been disbelieved by us and we have affirmed the finding of the Ld. trial Judge that the suit properties along with the other joint properties of Satchidananda and Achutananda had not yet been partitioned. Therefore, it is the part of their joint property. We have only dismissed the plaintiffs suit for partition on the ground that he has not brought all the joint properties into the hotchpot.

19. But it is still to be decided as to whether the cinema business is the joint family business of Satchidananda and Achutananda. It is true that even the Dayabhaga coparceners can held joint family property after the death of their common ancestor and can even run a joint family business. After the death of Gopinath Samanta, Achutananda and Satchidananda have not divided their joint properties. So, they are holding the properties as joint family properties. But as to whether the cinema business is a joint family business of Satchidananda and Achutananda requires decision because there is no doubt that a co-sharer may with the consent of the other co-sharer can raise construction in the joint property and can also run his own business. In such case that business cannot be regarded as joint family business only because it is being run on a joint family property. It is well settled that as a coparcener of Dayabhaga Law takes a defined share of the coparcenary

property is entitled to make any use of any portion of the coparcenary property in his occupation in the way he likes. The only limitation is that he cannot do any act which is injurious to the coparcenary property or which affects right of other coparceners. When he is not in a possession of a specific portion of the joint family property, he cannot without the consent of the other coparceners start possessing it exclusively for his own benefit. But it is sometimes found that coparceners arrive at an amicable arrangement amongst themselves whereby each of them possesses and enjoys exclusively different portions of the joint family property. Reference may be made to the decisions of *Durga v. Kamini* : AIR1928 Cal535 and *Kaneshwari v. Sishuram* : AIR1924 Cal792 .

20. It is clear from the evidence of Satchidananda himself that the parties are possessing different portions of the joint property amicably. Achutananda has also stated in his evidence that before starting the construction of the cinema house he took the permission of Satchidananda. Therefore, with such consent or permission of Satchidananda, Achutananda could start construction of a cinema house with his own money and run the cinema business there and as such, such_ business cannot be held to be a joint family business.

21. The Ld. trial Judge is, however, on the basis of the evidence adduced by Satchidananda and his witnesses have come to the finding that the bricks which were stacked by their father were utilised for the construction of the cinema house and Satchidananda also contributed to some extent for constructing the said cinema house even though the major portion of the costs of such construction was borne by Achutananda, the elder brother and Achutananda also procured money by selling 6 annas share to Ranjan Bose and also by taking Rs. 65,000/- from Bishnupada Pramanik and Abdul Latif and inducted them as partners.

22. Before us the above findings of the Ld. trial Judge have been challenged both by the Ld. Advocate of the heirs of Achutananda and of Ranjan Bose, Bishnupada and Latif. It is urged by them that the evidence adduced by Satchidananda in this respect is full of contradiction and is absolutely improbable and the Ld. Trial Judge should have held that Satchidananda's story that the business is joint family business is not at all believable.

23. Satchidananda has in his evidence stated that his father left two stacks of bricks with which the cinema house have been constructed that he also left stand, surkis, windows and doors which were also utilised for the construction of the cinema house, that he and his brother bore the costs of construction and some bricks had to be purchased from U. N. Paul which was supplied by Sudhir Mondal, an employee of U. N. Paul and the costs of the said bricks were paid by him and by Provash, the son of his brother. Both Achutananda and Provash have denied the above facts. Achutananda has clearly stated that his brother had no concern with the construction of the cinema house and there was no stacks of bricks and other building materials for the construction to be made of the cinema house.

24. P. W. 1, Norode Behari Sarkar, a Medical Practitioner working in Orient Jute Mills has stated in his evidence in chief that the cinema house was constructed with the bricks left by Gopinath Samanta. He also claims to have paid some loan to the plaintiff in 1947 or 1948. According to him, the beginning of the construction of the cinema house started in 1945. P.W. 2, Nishi Das also claims to have seen two stacks of bricks to the east of the side of the cinema house. But he has stated he came to the village -- Joychan-dipur where the suit property was situated only in 1947. If we have to believe the P. W. 1 that the construction started in 1945, then how could P.W. 1 Nirodi see two stacks of bricks in 1947 in tact. He has also admitted in his evidence in cross-examination that when he came he saw the foundation of the cinema house have been laid and the wall was partially built. He does not know as to who was the owner of the cinema house. His evidence that he saw two stacks of bricks in 1947 in our view does not appear to be believable if the construction had commenced more than two years prior to his coming to Joychandipur. P.W. 3, Sudhir Mondal also claims to have seen two stacks of bricks on the cinema site previously and according to him, with the bricks of the stacks the foundation of the cinema house was built. He claims to have supplied some bricks from the brick field of U.N. Paul for which he claims to receive money from the plaintiff and Provash. In cross-examination he admits that he is a tenant of the plaintiff. He has no document to show that he ever worked in the brick field of U. N. Paul. Therefore, no reliance can be placed on his evidence. P.W. 4 Ashoke Ch. Banerjee has stated in his evidence that he saw two stacks of bricks near the land and the wall of the cinema house was built with those bricks. He

never saw Gopinath and cannot say as to whether the stacks of bricks which he saw really belonged to Gopinath Samanta. He claims to have given loan to both Satchidananda and Achutananda even though he does not have any money lending business.

25. On considering the above oral evidence we are of the view that the evidence adduced by Satchidananda on this point is highly unsatisfactory and the witnesses produced by him in support of his case have made contradictory statements. It is an admitted fact that the municipal sanction for the construction of the cinema house was taken by Achutananda himself. He also took- the cinema licence from the District Magistrate alone. P.W. 4, Ashoke Banerjee in cross-examination has admitted that Satchidananda opposed the granting of licence of Achutananda. It is also the evidence of Satchidananda that he also applied for cinema licence from the District Magistrate but the same was refused.

26. If both the brothers jointly wanted to start a cinema house on their joint property and to run the same as a joint family business, it is very much probable that both the parties would apply for a sanction of the construction of the cinema from the municipality and they would also jointly apply for the cinema licence. Moreover, even if as a co-sharer Satchidananda could permit his elder brother to act as Manager to start a cinema business on the joint property but in that case he would not oppose such granting of licence by the District Magistrate. If he is running a joint family business with his elder brother, he would not separately apply for cinema licence.

27. There is no satisfactory evidence that the petitioner contributed any amount to the construction of the cinema house and the evidence adduced by him in this respect is far from satisfactory. Therefore, we are unable to accept the finding of the Ld. Trial Judge that the cinema business is the joint family business of Satchidananda and Achutananda. Even if the same is running on their joint family property, we are fully aware that even Dayabhaga coparcener can start a joint family business, that for that purpose sufficient evidence has to be laid only because the cinema house has been constructed and the cinema business is being run on a portion of the joint family property of Satchidananda and

Achutananda, we are unable to hold that the said business is a joint family business run by Achutananda as the Karta. Satchidananda has in cross-examination admitted that it has not been decided as to what would be the capital of the business and what amount each of them would contribute towards the capital and what would be their share in the business. On the other hand there is not only oral but documentary evidence that it was Achutananda who obtained the permit for the cement for construction of the cinema business. He applied for electric connection in his name and also applied for a cinema licence in his own name. In the result we are of the view that the plaintiffs share for accounts made in T.S. No. 1/54 cannot, therefore, be granted.

28. We would now come to decide the appeal filed by Achutananda. His case is that he is the exclusive owner of the cinema business and that Ranjan Bose, Bishnupada and Latif had no connection as the partners of the said business. He has also challenged the Kobala purported to have been executed by him in favour of Ranjan transferring 6 annas share in the suit property as well as the cinema business as fraudulent and without consideration. He has challenged the compromise decree in T. S. No. 131/83 as fraudulent and void. He has also challenged the Partnership Deed dated 26th November, 1952 entered into between Achutananda, Bishnupada and Latif as invalid as the same has not been registered. He has also challenged the agreement dated 22nd December, 1953 Ext. G(1) also to be fraudulent and void. He has also challenged the Ammukhtarnama executed in favour of the brother of Bishnupada as fraudulent and void. The Ld. Trial Judge has in his elaborate judgment has considered all the above allegations made by Achutananda made in T. S. No. 103/65 against which he preferred T.A. No. 183/ 75. We have carefully considered the relevant portions of the judgment of the Ld. Trial Judge in this respect. We are of the view that the evidence of Achutananda and his witnesses including his son Provash in this respect is very much unsatisfactory. Both of them in their evidence have made general statement that all those transactions are fraudulent and void. So far as the Sale Deed dated 14th July, 1952 is concerned the Ld. Trial Judge has clearly found that the same was with consideration. When he refused to execute the said Sale Deed and registration case was started by Ranjan Bose before the District Registrar, 24-Parganas Achutananda gave his deposition before the District

Registrar Ext. A tendered in T. S. No. 103/65 is the certified copy of his deposition. In his evidence he has only stated that the portion of his deposition to which his attention was drawn in cross-examination before the Ld. Trial Judge he only stated that he did not remember to have made the said statement. Following is the statement to which his attention has drawn -

'On the 13th Aswar, 1350 B. S. corresponding to 14th July, 1952 I executed the Deed of Sale for Rs. 20,000/- only in favour of Ranjan Kumar Bose of 31, Janak Road, Calcutta. Today I admit the execution of Ext. 1 and these are my signatures Ext. I (i) series. I received Rs. 20,000/- only as consideration money of Ext. 1. I have no objection to the registration of the documents'.

29. In view of the above the evidence of Achutananda before the Ld. Trial Judge that the said Sale Deed is fraudulent and void and without consideration has no legs to stand upon.

30. As regards the other documents namely the compromise decree and the agreement dated 22nd December, 1953 we are of the view that save and except that the same was fraudulently obtained by using force upon him. No satisfactory evidence has been adduced to prove that the same was fraudulent or void. The evidence in this respect is highly unsatisfactory. After the compromise in the Suit No. 131/53 was filed in Court steps were taken (for....Ed.) recording the compromise, the same has been challenged. The same was refused. But the petitioner (sic) in the High Court by filing a miscellaneous appeal and the said miscellaneous appeal has been dismissed. The bone of contention of Achutananda in challenging the above instruments is that he received no money from Bishnupada and Latif for the purpose of the said business and, therefore, there could be no partnership between him and those persons. The Ld. Trial Judge has already considered in detail in evidence of the witnesses in this respect and has been satisfied that there was sufficient evidence before him to hold that Bishnupada and Latif each contributed Rs. 32,500/- towards the business. In the unregistered Partnership Deed executed on 26th November, 1952 (Ext. F1) between Achutananda, Bishnupada and Latif. there is a clear averment about the said contribution made as well as in the subsequent document dated 22nd

December, 1953. On 26th November, 1952 a Deed of Delegation of charges has been made between Achutananda on the one hand and Bishnupada Latif on the other in which Achutananda alone took charge of the said business. This was, however, followed by the special agreement dated 22nd December, 1953 prior to the compromise filed in Suit No. 131/53 followed by a registered Deed of Power of Attorney dated 28th December, 1953 by which Achutananda, Ranjan, Bishnupada and Latif entrusted Aswini Kumar Pramanik, the brother of Bishnupada to run the cinema business on their behalf as constituted attorney, that this Deed has been acted upon and Aswini actually was running the business on their behalf and was also handing over the sale-proceed to Ranjan has been clearly established by evidence. In that view of the matter we are fully satisfied that the Ld. Trial Judge was justified in holding that in the partnership business that was run in the suit premises under the name and style of 'Bina Cinema', Ranjan had 6 annas share Latif and Bishnupada 4 annas share each and Achutananda had 2 anna share. The said share had been clearly established by the documents including the compromise decree and the agreement dated 22nd December, 1953. On behalf of heirs of Achutananda their Ld. Advocate has urged before us that if the documents were properly construed, it will be clearly established that the said documents did not create any partnership agreement. He has also urged that unregistered Partnership Deed dated 26th November, 1952 cannot also be treated as a valid document.

31. On considering the submission made by both the parties we are of the view that the unregistered Partnership Deed cannot be enforced as a valid agreement in view of S. 9 of the Partnership Act, but for the purpose of dissolution of such an unregistered partnership business the sale document can be used in evidence. We are of the view that the observation of the Ld. Trial Judge in this respect is quite correct. But we would like to point out that when the said Deed was executed Bishnupada and Latif were not aware that Ranjan Bose had purchased the 6 annas share in the suit property as well as in the cinema business. Therefore, in the subsequent documents including the compromise petition filed in Title Suit No. 131/53 and in the agreement dated 22nd December, 1953 but virtually a new Partnership Agreement has been created.

32. When we are satisfied that the agreement dated 22nd December, 1952 cannot be challenged as invalid or fraudulent, then we have to uphold the case of the respondents that there was the Partnership Agreement stipulating the above share. The Ld. Advocate for the appellant has drawn our attention to the recitals of the agreements dated 22nd December, 1953 in which the parties agreed that if Achutananda returned Rs. 20,750/- to Ranjan, Ranjan retransferred his 6 annas share in the property to Achutananda and if Rs. 65,000/- were paid by Achutananda to Bishnupada and Latif they would also similarly retransfer their share to Achutananda.

33. But only because of those recitals which are nothing but are executory contract the said document cannot be treated as an agreement to run the business as partners according to the stipulated share till the above payments were made by Achutananda and Achutananda acquired 16 annas interest in the business. So long as the refund amount was made, the partnership was to continue and this is the clear averment of the said Deed. Subsequent to that Deed all the four partners executed the Power of Attorney dated 28th December, 1953 in favour of Aswini Kumar Pramanik and Aswini has in his evidence clearly stated that by virtue of the Power of Attorney he was running the business on behalf of the partners.

34. In view of the above, we are unable to accept the contention of the Ld. Advocate of the heirs of Achutananda that on a proper construction of a relevant Deed no such partnership agreement could be spelt out. But the serious challenge which his Ld. Advocate has raised against the validity of the said partnership business is that in view of the terms of the licence granted in the name of Achutananda alone there would be no valid partnership business in between Achutananda and Ranjan, Latif and Bishnupada because Achutananda cannot transfer the license issued by him alone to the Partnership Firm.

35. The decision reported in 1991 Cri LJ 107, Gobardhan v. Abani decided by Mohi-tosh Mazumdar, J. has been referred before us and it has been urged that the Ld. Judge in that decision has clearly held that the licence granted in terms of the provisions of West Bengal Cinema Regulations Act and the Rules framed thereunder cannot be transferred and shall be for the benefit of only the licensee in

a case where sub-rule (2) of Rule 19 of the said Rules does apply and that when in the instant case permit was granted for the benefit of licensee namely the defendant No. 1 but not for other partners namely the plaintiff and the defendant No. 2, the Partnership Agreement being in violation of the terms of the licence completely militates against sub-rule (1) of Rule 19 of the said Rules and the Agreement is, thus, void by S. 24 of the Contract Act and the Partnership is illegal. It is submitted that in this case also it is an admitted position that the cinema business is being run in the suit land on the basis of the licence issued to Achutananda alone and it is not the case of any of the respondents that the licence was taken in the name of the partnership business. Therefore, a licence granted in terms of the West Bengal Cinema Regulations Act and the Rules framed thereunder cannot be transferred to the partnership business and, therefore, the partnership business which has been run on the basis of the licence obtained by Achutananda alone being violative of Rule 19 of W. B. Cinema Regulations Rules being agreement contravening the provisions of the relevant statute is void u/ S. 24 of the Contract Act.

36. We find on consideration of the judgment passed by the Ld. Judge that before the Ld. Judge also it was an admitted position of the respondents that the licence was granted in favour of the defendant No. 1 and on the basis of the said licence the partnership agreement was entered into. The Ld. Trial Judge granted the decree for dissolution of the partnership business and for accounts which was affirmed by the Ld. 1st Appellate Judge. In 2nd Appeal, Mohitosh Mazumdar, J. has set aside the said judgment and decree and held that in view of S. 6 of the W.B. Cinema Regulations Act, 1954 read with Rules 8, 9 and 19 of the W. B. Cinema (Regulations of Public Exhibition) Rules, 1956, the licence shall not be transferable and has to be used for the benefit of the licensee. In coming to the above finding the Ld. Judge has relied upon the Full Bench decision of Madras High Court in Velupadayachi v. S. Pillai, : AIR1950 Mad444 , K. Viswanathan v. Namak Chand Gupta, : AIR1955 Mad536 , M. H. Cowder v. Naga(sic) Mistry : [1956]29ITR842(Mad) , A.V.V. Naidu v. K.V.T. Kadar AIR 1983 Mad (sic) 413, Mohorilal v. Sri Ballav, , Mofijuddin v. Habibuddin, : AIR1957 Cal336 , Gour Ch. Sinha v. Butto Krishna Ghosh, 81 C.W.N. 385, he has, therefore, held that when the transfer of licence is prohibited under the relevant statute, then a partnership

business on the basis of the said licence granted in the name of one of the partners amounts to transfer of the licence in favour of the partnership business and the same is void.

37. It is true that Achutananda did take this plea before the Ld. Trial Judge, no such issue was also framed as to whether the partnership is void but it is a pure question of law which arises on the basis of the evidence already adduced. It is an undisputed fact that it was Achutananda alone to whom the licence was granted and the partnership agreement was created and the business that was run was on the basis of the said licence of Achutananda. In the agreement dated 22nd December, 1953 it was also clearly stipulated that as that time the licence issued to Achutananda had already expired, the parties agreed to renew the said licence in the name of Achutananda even at that stage also the partners did not want to have a licence in the name of the partnership business and agreed to run the business on the basis of the licence to be issued in favour of Achutananda Samanta. Admittedly, after this agreement licence was renewed in the name of Achutananda and the business was run till the suits have been filed by Ranjan Bose and by Bishnupada and Latif for dissolution of the said partnership business. In view of the above clear facts established and when under the law the transfer of licence has been prohibited under the W. B. Cinema Regulations Act read with rules mentioned in the above and the licence granted in favour of the licence has to be used only for the benefit of the licensee, then the running of the business on the basis of the said cinematographic licence issued in favour of Achutananda must be held to be illegal and void. Therefore, we accept the contention of the appellants of the T. S. No. 187/75 that the Partnership business of the Bina Cinema entered into between Achutananda Samanta, Ranjan Bose, Bishnupada Paramanik and Abdul Latif is void under S. 23 of the Contract Act. The partners of the said business namely Ranjan Bose, Bishnupada Paramanik and Abdul Latif cannot file the suits namely Suit Nos. 57/61 and 32/62 for dissolution of the said partnership business and for accounts.

38. In the result the judgments and decree passed by the Ld. Trial Judge in T.S. No. 1 / 54 re-numbered as T.S. 49/73 and T.S. 103/65, T.S. 57/61 and T.S. 32/62 are hereby set aside. All the suits are dismissed on contest with costs against the

contesting defendants. F.A. Nos.21 and 22/76 and T.A. 131/75 are dismissed and T.A. 183/75 is allowed. We would, however, direct the parties in this appeal to bear the respective costs of these appeals themselves

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