

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Siddhartha Roy Chowdhury

SA 49 of 2022

Krishnalal Debnath

Vs.

Hiralal Debnath & Anr.

For the Appellant	: Mr. Ayan Banerjee, Adv. Ms. Debasree Dhamali, Adv. Ms. Debjani Sengupta, Adv.
For the Respondents	: Mr. Sudipto Panda, Adv. Mr. Subrata Ghosh, Adv.
Order on	: 22 nd August, 2022

Siddhartha Roy Chowdhury, J. (Oral): This appeal is directed against the judgement and decree passed by learned 1st Appellate Court in T.A. No. 7 of 2019 affirming the judgement and decree passed by learned Civil Judge (Senior Division), Kalna in T.S. No. 16 of 2017.

Briefly stated the appellant/plaintiff filed a suit for partition in respect of his 1/3rd share in the suit properties, which he acquired by inheritance.

Admittedly the suit properties were owned by Radhamadhab Debnath, Birohini Debnath and Debendra Kumar Debnath having

1/3rd share each. After the demise of Radhamadhab and Birohoni, who were husband and wife, their 2/3rd share devolved upon their daughter Sumati Debnath who was survived by to her two sons, plaintiff Krishnalal Debnath and defendant no. 1 Hiralal Debnath; each of them acquired 1/3rd share by inheritance.

Debendra Debnath, the other co-owner in respect of 1/3rd share sold and transferred the same to one Nityabasi Debnath. Hiralal the defendant no. 1 purchased 1/3rd share of Nityabasi Debnath in respect of plot nos. 179 and 244 and she sold 1/3rd share in respect of plot no. 197 to Raju Debnath the defendant no. 2. Hiralal also sold his 1/3rd share in respect of said plot no. 197 to Raju Debnath by the common deed. Thus plaintiff acquired 1/3rd share in all three plots, defendant no. 2 acquired 2/3rd share in plot nos. 179 and 244 and defendant no. 2 acquired 2/3rd share in respect of plot no. 197.

After considering the evidence learned Trial Court was pleased to declare 1/3rd share of the suit properties in favour of the plaintiff/appellant but refused to grant any consequential relief.

Learned 1st Appellate Court also maintained the same view, because of want of documents to show the share of defendant no. 2.

Having heard learned Advocate for the appellant and having perused the materials on record, we are of the opinion that there is

substantial question of law involved in this appeal. Hence the appeal is admitted to decide the following substantial question of law:-

1. Whether learned Courts below erred substantially on the point of law by declining to grant leave to the plaintiff to take step for drawing up of final decree, having declared his 1/3rd share in a suit for partition?

Learned Advocate for the respondent no. 1, Mr. Sudipto Panda is found present before us. Thus Mr. Sudipto Panda waives the right as to notice of appeal. Mr. Ayan Banerjee, learned Advocate for the appellant files a petition under Order 41 Rule 27 C.P.C. On the verbal prayer of the parties we propose to dispose of both the appeal and the application.

Upon perusal of the judgement passed by the learned Courts below, we find that absence of any document of title of defendant/respondent no. 2, who even did not contest the suit, put a bridle upon the learned Trial Court and 1st Appellate Court to grant preliminary decree.

However in a suit for partition, share of a party is required to be declared in the form of preliminary decree; even Court can declare share of other parties as well. Once such share is declared, the Court should direct the parties to take step for drawing up final decree to effect partition by metes and bounds, if necessary with the help of an Advocate-Commissioner. In fact learned Trial Court also

observed that defendant no. 1 has 2/3rd share in suit plot nos. 179 and 244.

Learned Advocate for the appellant Mr. Banerjee submits that during pendency of this appeal, the appellant has been able to collect certified copy of the title deeds which demonstrates showing 2/3rd share of the defendant no. 2 in plot no. 197. We are inclined to admit the said document being certified copy of the deed as Exhibit-6, admissible in evidence under Section 57 (5) of the Registration Act, 1908 and this document indicates the title of the non-contesting defendant/respondent no. 2 to the extent of 2/3rd share, in plot no. 197, acquired by purchase.

Under such circumstances, we are inclined to set aside the impugned judgement and decree passed by learned 1st Appellate Court and modify the judgement of learned Trial Court by declaring the 1/3rd share of the plaintiff/appellant in respect of all the three suit plots, 2/3rd share of defendant/respondent no. 1 in respect of plot no. 244, 179 and 2/3rd share of the defendant/respondent no. 2 in respect of plot no. 197. Parties are directed to get the properties partitioned in accordance with their respective share amicably within two months, failing which any of them will be at liberty to approach the learned Trial Court for final decree by appointing an Advocate-Commissioner to effect partition by metes and bounds.

The Second Appeal and the applications are thus disposed of.

Department is directed to incorporate the document Exhibit-6 in the Exhibit list and draw up preliminary decree within 15 days from this day.

Copy of the order and decree, together with the Lower Court Record if arrived, shall be sent down to the Trial Court immediately.

I agree

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)