

21.06.2022
KC(11)

S.A. 72 of 2021
Anisur Ali @ Ansarul and Ors.
-versus-
Mokbul Hossain and Ors.
With
CAN 1 of 2021

Ms. Sohini Chakraborty,
Mr. Arup Sarkar,
Ms. Prajjaini Das.....For the appellants.

Ms. Shila Sarkar,
Mr. Tanmoy Mukherjee,
Mr. Souvik Das.....For the respondents.

The question which arises for consideration in this second appeal is whether the impugned preliminary decree passed by the learned court below is perverse?

It is alleged by Ms. Chakraborty, learned advocate for the appellants that in determining the shares of the parties'/their predecessors-in-interest in the preliminary decree, the learned judge did not take into account transfer of a portion of the property in favour of her clients. Similarly, in making the determination of shares of the parties, the learned judge had taken into account as the respondents' share a part of the property which had been transferred by them/their predecessors-in-interest to the appellants/their predecessors-in-interest.

This is denied by Mr. Tanmoy Mukherjee, learned advocate for the respondents.

Instead of a legal enquiry into the alleged perversity in this finding, it would serve the ends of

justice if the preliminary decree is set aside, the entire matter be remanded to the learned trial judge and he be directed to pass a fresh preliminary decree re-determining the shares of the parties considering the above transfers namely, Exhibits – A, A(1), A(2) and A(3).

We order accordingly.

We clarify that we have to set aside the entire preliminary decree in order to obtain a proper determination of shares of the parties on remand. We do observe that save and except the above controversy with regard to the shares of the parties, there is no grievance with the impugned preliminary decree. The rest of it may be affirmed by the learned trial judge while pronouncing a fresh preliminary decree.

We request the learned court below to pass the fresh preliminary decree within a period of six months from date preferably.

We formally admit this second appeal and dispose of the same by the above order. The connected application (CAN 1 of 2021) is also disposed of accordingly.

(I.P. MUKERJI, J.)

(BIVAS PATTANAYAK, J.)

