

4 21.4.2022
Sc Ct. no.8

FAT 117 OF 2017

Sambhu Nath Kundu

Vs.

Sri Bhola Nath Kundu & Ors.

Mr. Souradipta Banerjee
Ms. Fatima Hossain.

...For the Appellant/
Defendant

Mr. Abhijit Ray
Mr. Shubham Gupta
Ms. Tania Sen.

...For the Respondent/
Plaintiff

The appeal is arising out of a preliminary decree passed by the learned trial court. However, the point urged before us is with respect to the division proposed by the Commissioner of Partition in the final decree proceeding.

In our order dated 25th March, 2022, we have directed the parties to arrive at a settlement. The dispute that has canvassed before us is with regard to the use of common staircase.

This is an old property in North Calcutta and if it is divided vertically there may be difficulty with regard to separate staircase being constructed for the two brothers. There may be difficulty also with such plan being sanctioned. Virtually it would become impartible in the sense that one brother may not have a staircase to go to

the roof. In a partition suit it should be the endeavour of the Court to ensure that the parties enjoy their respective shares without interference by the other but in respect of the portions which cannot be divided, if possible to keep it common depending upon the nature of inconvenience likely to cause of the enjoyment of allotted shares.

The appellant and the respondent no.1 are brothers and there is an agreement that the staircase from the ground floor up to the roof will remain common as any other view would cause serious inconvenience and hardship to both the parties in enjoying the suit property.

We have been informed that the report of the Commissioner of Partition is pending before the trial Court for acceptance in which objections have been filed.

The trial Court is requested to dispose of the final decree proceeding after taking into consideration the aforesaid observation and to the extent the Commissioner's report does not conform to the views expressed by us with regard to the staircase, the same should stand altered to the aforesaid extent in respect of the dwelling house of the parties.

Insofar as other property is concerned, the trial Court shall take into consideration the Commissioner's report and decide the said allocation after giving hearing to the parties unless the parties arrive at an amicable settlement in respect of the other property for drawing final decree.

Accordingly the appeal is disposed of. However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be furnished expeditiously on usual undertaking.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)