

2.05.2022

ASR

3.

**FA 281 of 2013
With
CAN 3 of 2018 (Old CAN No. 7939 of 2018)
With
CAN 4 of 2018 (Old CAN No. 7940 of 2018)
With
CAN 5 of 2018 (Old CAN No. 7941 of 2018)**

**Chittaranjan Panja & Ors.
Versus
Soumen Kumar Panja @ Dass & Ors.**

**Mr. Purnasish Gupta
Mr. Jayanta Kumar Mukhapadhyay**

.....for the appellants

Mr. Sanjib Seth

.....for the Respondents

Re :CAN 3 of 2018 (Old CAN No. 7939 of 2018)

The application (CAN 3 of 2018 old CAN no. 7939 of 2018) taken out by the appellants is not pressed by learned counsel.

Accordingly, it is dismissed as not pressed.

**Re : CAN 4 of 2018 (Old CAN No. 7940 of 2018)
With
CAN 5 of 2018 (Old CAN No. 7941 of 2018)**

Only one material point is involved in this appeal.

Whether the impugned judgement and order dated 4th May, 2013 dismissing the partition and administration suit on the ground

that it did not include the entire properties of the parties was correct or not?

The appellant has taken out an application (CAN 5 of 2018 old CAN no. 7941 of 1018) to include such properties within the scope of the partition and administration suit.

The appellant has also taken out another application (CAN 4 of 2018 old CAN No. 7940 of 2018) complaining that in violation of the order of status quo dated 23rd September, 2015, with regard to the nature and character of the subject property and possession thereof passed by a Division Bench of this court, the respondent nos. 1 to 3 have made new construction on the property and sold out a part of the suit properties in violation of the order.

The appeal is considerably old.

It appears from the said application that admittedly some joint family properties were left out in the partition and administration suit in question.

In that view of the matter, we uphold the finding of the learned court below that there has been non-inclusion of joint family properties in the partition and administration suit. However, we cannot uphold the decision dismissing the suit. That part of the decree is set aside.

We direct that the said application for inclusion of properties made before this Division Bench is to be made before the learned court below and is to be considered by it in accordance with law. All points are kept open.

The other application made alleging violation of this Court's order may also be considered and dealt with by the learned court below and appropriate measures should be taken by the said court if violation of this Court's order is proved. All points are kept open.

We request the learned court below to proceed with the partition and administration suit and the applications made in support thereof so that a preliminary decree can be passed as early as possible followed by a final decree not later than two years from date.

The appeal (FA 281 of 2013) along with (CAN 4 of 2018 old CAN no. 7940 of 2018), (CAN 5 of 2018 old CAN no. 7941 of 2018) are disposed of by this order.

(I. P. Mukerji,J.)

(Aniruddha Roy,J)

