

224 **06.10.**
2023

Ct. No. 04

ab

FA 39 of 2023
IA No. CAN 2 of 2023

Ashok Kumar Sinha
Vs.
Md. Khurshid Alam and another.

Mr. Pinaki Ranjan Mitra.
... for the appellant.

Mr. Wasim Ahmed,
Mr. Md. Kashif.
... for the respondent no. 1.

Though the application being CAN 2 of 2023 is listed today, but on the consent of the respective Counsels, the main appeal is taken up for hearing.

It appears from the record and also admitted by the learned Counsel appearing for the respondent no. 1 that his client acquired the right, title and interest in respect of the joint property from the respondent no. 2. It is uniformly submitted by the Counsel appearing for the appellant as well as the respondent no. 1 that the respondent no. 2 did not appear and contest the suit in the trial Court.

Obviously, once the respondent no. 2 has divested his right, title and interest in respect of the portion of the property or the share in the joint property in favour of the respondent no. 1, the person, who would be affected by a decision taken in the said suit, would be the respondent no. 1.

Mr. Wasim Ahmed, learned Counsel appearing for the respondent no. 1, on instruction from his client, fairly submits that the order impugned in the instant appeal may be set aside and the matter may be relegated to the trial Court to decide the same afresh in presence of the appellant. It is indicated by him that the challenge is thrown to a final decree passed in a partition suit in the

instant appeal solely on the ground that the appellant could not remain present on the day when such decree is passed and, therefore, the respondent no. 1 does not want that the final decree should be passed ex parte rather wanted to get such decree again on contest.

In view of the aforesaid stand and considering the fact that the final decree was passed ex parte and the respondent no. 1, who was contesting the said partition suit, has consented for setting aside the said decree, the impugned final decree is set aside. The matter is remitted to the trial Court for deciding afresh.

It goes without saying that an opportunity of hearing should be given to the appellant before the Court proceeds to accept the Partition Commissioner's report for the purpose of passing the final decree.

We also made it clear that the Court shall dispose of the partition suit by passing the final decree within four weeks from the date of reopening of the trial Court following the Puja Vacation. The time limit given herein above is peremptory and mandatory.

It is open to the learned Judge in the trial Court to refuse the adjournment to either of the parties in order to adhere the time limit indicated herein above unless necessitated by unforeseen and unavoidable circumstances. Even in such cases, the adjournment shall be granted keeping in mind the outer limit indicated in the instant order.

With these observations, the appeal and the connected application being CAN 2 of 2023 are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

