

24.02.2023
Item No.11
Court No.6.
S. De

F.A. 99 of 2021
Smt. Molly Dey.
Vs
Sri Gautam Dey & Ors.

Mr. Gautam Chakraborty,

Mr. Kartik Kumar Ray

...for the appellant.

Mr. Asis Chandra Bagchi,

Mr. S.S. Lahiri,

...for the respondent no.1.

Ms. Sanjana Chakraborty,

...for the respondent no.2.

By consent of the parties, the appeal is taken up
for hearing.

A judgment and order dated February 8, 2021
whereby T.S. No. 70 of 2020 was decreed in
preliminary form by the learned Civil Judge (Sr.
Division), Sealdah, is under challenge in this First
Appeal.

It is not in dispute that one Gopal Chandra Dey
and Debdas Dey who were brothers, were joint owners
of a property situate at 16, Congress Exhibition Road,
P.S. Beniapukur, Kolkata – 17 (hereinafter referred to
as suit premises). Each of the brothers held undivided
half share of such property.

It is also an admitted position that by a
registered deed of partition executed on May 4, 2005,
the two brothers amicably partitioned the suit
property. Schedule 'A' to the deed of partition

described the entire property. Schedule 'B' described the portion that went to Gopal. Schedule 'C' described the portion that went to Debdas and Schedule 'D' to the partitioned deed described the portion of the property that was to be the common portion.

Gopal died leaving behind the respondents in this appeal as his legal heirs. Debdas died leaving the appellant as his only legal heir. Accordingly, the parties hereto inherited the respective portions of Gopal and Debdas and the portion mentioned in Schedule 'D' continued to be in common user.

It appears that the respondent no.1 in this appeal filed a suit for partition of the aforesaid property being T.S. No. 70 of 2020. In the suit, this appellant was impleaded as the first defendant and the respondent nos. 2 to 7 herein were added as proforma defendants.

The appellant herein being the defendant no.1 in the suit filed an application for dismissal of the suit. His contention was that since the plaintiff in the suit has admitted that the property in question already stood partitioned by way of a registered deed of partition, a further suit for partition is not maintainable. Accordingly, the appellant herein filed an application for dismissal of the suit on admission under Order 12 Rule 6 read with Section 151 of the Code of Civil Procedure.

The plaintiff in the suit being the defendant no.1 herein filed a written objection to the aforesaid application of the appellant herein.

It appears that the suit was listed before the learned Judge on February 8, 2021. The learned Judge observed that since the defendant no.1 in his written statement has admitted that the plaintiff and the proforma defendants are the owners of half share and the defendant no.1 is the owner of the other half share in the suit property, no trial of the suit need be held. The learned Judge decreed the suit in preliminary form.

Being aggrieved, the defendant no.1 has come up by way of this appeal.

The appellant says that his application for dismissal of the suit was not considered at all. He says that once the property in question stood partitioned by way of a registered deed executed by and between the predecessors in interest of the parties hereto, no further question of the Court partitioning the said property can arise.

We are not inclined to go into the merits of the matter. We see that the appellant's application for dismissal of the suit was not considered at all by the learned Trial Judge. We are of the view that before proceeding further with the trial of the suit, the appellant's application for dismissal of the suit ought

to be considered and disposed of by the learned Trial Judge.

On the aforesaid ground alone, we set aside the judgment and order under appeal and remand the matter to the learned Trial Judge to first decide the application taken out by defendant no.1 for dismissal of the suit on admission and only then take further steps in the matter, if necessary. All interim orders passed in this appeal stand vacated.

We clarify that we have not entered into the merits of the case. However, since there was an interim order in the appeal, let both parties maintain status quo in respect of the suit property till the learned Trial Judge disposes of the application of the defendant no.1 for dismissal of the suit.

It is expected that the application of the defendant no.1 shall be disposed of by the learned Trial Judge as soon as possible and preferably within four months from the date of a copy of this order being placed before the learned Trial Judge.

F.A. 99 of 2021 is, accordingly, disposed of.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)