

11.10.2023

Court : 04
Item : 01
Matter : FMA
Status : DO
Bench ID : 266048
Transcriber : NANDY

FMA 2 of 2023

with

CAN 1 of 2022

CAN 2 of 2023

Minati Ganguly & Anr.

Vs.

Lopa Mukherjee

Mr. Satrajit Sinha Roy, Advocate

.....for the Appellants

Mr. K.K. Pathak, Advocate

Mr. Souvik Maji, Advocate

.....for the Respondent

1. The appellant has assailed the preliminary decree passed in a partition suit whereby and whereunder the share of the parties have already been determined and a direction for taking steps to separate the shares, is also passed.
2. The ground of challenge in the instant appeal is squeezed to the extent that the description of the property appended in the schedule of the plaint is incorrect. According to the appellant the area shown in the schedule of the plaint is much more than the area actually owned and possessed jointly by the parties. Such being the point involved in the instant appeal, we are unable to comprehend whether the first appeal in this regard can be maintained at the behest of the appellant.
3. Be that as it may, the share as determined by the Trial Court in the main preliminary decree is not disputed. So far as the area of the property is shown in the plaint is concerned, the same shall be subject to a personal verification and/or ascertainment by the Partition Commissioner and the report would be filed with regard to the separation of the shares strictly in terms of the preliminary decree. Mere misdescription of the

area in the plaint cannot be a ground to set aside the preliminary decree which primarily determines the share of the parties and does not go further.

4. In the event, the Partition Commissioner at the time of taking measurement of the property finds the property to be less than what has been disclosed in the plaint, there is no difficulty on the part of the Partition Commissioner in taking note of it and divide the properties on the basis of the shares held by the parties in terms of the preliminary decree.
5. Such being the position, we do not feel that keeping the appeal pending and not disposing of the same after observing all the procedural formalities established in this regard, would only burden the docket of the Court.
6. Accordingly, we **dispose of** the appeal being **FMA 2 of 2023** on the basis of the findings made hereinabove. The connected applications, if there be any pending, are also disposed of.
7. The Trial Court is directed to appoint a Partition Commissioner, if not already appointed, and proceed for passing the final decree after affording an opportunity of hearing to all the parties to the proceedings in accordance with law.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

