

18.05.2023
Item Nos.01 & 02
Court No.32
Avijit Mitra

FA 28 of 2023
with
IA No. CAN 1 of 2023
with
IA No. CAN 2 of 2023
Sri Ananda Gopal Saha & ors.
with
Smt. Bishakha Saha & ors.
with

FAT 261 of 2022
with
IA No. CAN 1 of 2023
Murari Saha & ors.
Vs.
Smt. Bishakha Saha & ors.

Mr. Syed Julfikar Ali
...for the appellants
Mr. Partha Pratim Roy
...for the respondent nos. 1 to 3

Five daughters of one Balaram Saha, since deceased instituted a partition suit against the other legal heirs of Balaram Saha and legal heirs of one Manindra Saha in respect of the properties mentioned in the schedules A, B and C appended to the plaint. After contested hearing, the learned Court below decreed the suit in preliminary form declaring that the plaintiffs and defendants are entitled to 1/11th share each in the A, B and C schedule properties.

Aggrieved thereby, three sons of Balaram Saha (in Short, Balaram) have preferred an appeal being FA 28 of

2023 and the legal heirs of Manindra Saha also assailed the judgment and decree passed in preliminary form in an another appeal which was registered as FAT 261 of 2022.

During course of hearing both the learned advocates, Mr. Roy and Mr. Ali submit that the dispute cropped up in between the parties hereto have been settled amicably out of Court. Accordingly one application has been taken out being IA No.CAN 2 of 2023 in FA 28 of 2023 enumerating certain facts which are as follows :

“3) That in respect of Plot No.374 in Schedule A of the Plaint, Balaram Saha had a area of 9 decimal out of the 33 decimal. In plot No.377, Balaram Saha had an area of 88 decimal out of the 1.32 acres of land. Therefore, only the land of Balaram Saha are partible.

4) In respect of Schedule B of the plaint in respect of Plot No.328 Balaram Saha was the owner of 27 Decimal of land out of 1.25 acres. In respect of Plot No.327/822, Balaram Saha was the owner of 65 decimal of land out of 68 decimal. Therefore only the aforementioned land of Balaram Saha as mentioned here are partible.

5) In respect of Schedule C as mentioned in the plaint, which indicates plot No.500/1858 Sub plot No.57, Balaram Saha was the owner of 1 decimal (22.6 X 30 sq.ft.) of land out of 3 decimals and of the

said 1 decimal land (22.6 X 30 sq.ft.) out of 3 decimals of land is partible.

6) Therefore, the entire area as mentioned in the schedule of the plaint is not partible and only the partition of land of Balaram Saha as discussed above is partible.”

Both Mr. Roy and Mr. Ali consistently voiced that Balaram had i) 9 dec. out of 33 dec. in plot no. 374 ,ii) 88 dec. out of 1.32 dec. in plot no. 377 , iii) 27 dec. out of 1.25 dec. in plot no. 328 , iv) 65 dec. out of 68 dec. in plot no. 327/822 and v) 1 dec. out of 3 dec. in plot no. 500/1858.

Both the parties hereto admitted that only the portions of land belonging to Balaram are Partible and legal heirs of Balaram shall be entitled to 1/11th share each in respect of properties left by Balaram.

Treating the statements made in paragraphs 3 to 6 to the application being CAN 2 of 2023 and oral submissions made on behalf of both the parties hereto as an admission under Order XII Rule 6 of the Code, we are inclined to dispose of both appeals and modify the judgment and decree passed in preliminary form accordingly.

Consequently, the appeal being F.A. 28 of 2023 and F.A.T. no. 262 of 2023 are disposed of on admission. Judgment and decree passed in preliminary form is modified to the following extent:

That the plaintiffs and defendant nos. 1 to 6 shall be entitled to $1/11^{\text{th}}$ share each of i) 9 dec. out of 33 dec. in plot no. 374 ,ii) 88 dec. out of 1.32 dec. in plot no. 377 , iii) 27 dec. out of 1.25 dec. in plot no. 328 , iv) 65 dec. out of 68 dec. in plot no. 327/822 and v) 1 dec. out of 3 dec. in plot no. 500/1858.

Let a decree be drawn up accordingly.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)