

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

IA No: GA 10 of 2021

In CS 91 of 2013

Smt. Bijaya Nundy & Ors.

Versus

Sri Prosanto Nundy & Ors.

Mr. Dipak Kr. Mukherjee

Mr. Deb Kr. Chandra

Ms. Aparupa Bhattacharyya

... For the plaintiffs/petitioners.

Mr. Sanjib Dawn

... For the defendants/respondents.

Hearing Concluded On : 27.09.2023

Judgment on : 29.11.2023

Krishna Rao, J.:

1. The plaintiffs have filed the suit for partition of the suit property amongst the plaintiffs and the defendants. By an order Dated 3rd December, 2013, this Court has passed preliminary decree. This Court

had also appointed a Commissioner for partition of the suit property as per the preliminary decree passed by this Court.

- 2.** After the preliminary decree passed by this Court, the plaintiff no. 1, plaintiff no. 2 and the defendant no. 1 have expired. The legal heirs of the plaintiff no. 2 were substituted as Plaintiff no. 2(i), 2(ii) and 2(iii). The legal heirs of the plaintiff no. 1 and the defendant no. 1 were already on record and thus the name of the plaintiff no. 1 and the defendant no. 1 were deleted from the cause title of the plaint.
- 3.** By an order dated 20th January, 2016, the preliminary decree dated 3rd December, 2013 was modified by declaring that, the defendant No. 2 would be entitled to 37.5 % share, the defendant No. 3 would be entitled to 12.5 % share and the defendant No. 4 would be entitled to 25 % share out of the whole property of their individual shares in the undivided 3/4th share in the property.
- 4.** By an order dated 6th June 2018, this Court has appointed a Surveyor Commissioner to assess the impact of the construction on the existing structure and if at all such construction is feasible according to the plan prepared by the Commissioner of Partition.
- 5.** The Structural Engineer has filed his report wherein it is mentioned that no major addition or alteration in the said building at present could be carried out. Since the premises cannot bear the impact of fresh construction to effect the partition as per plan prepared in consultation with the parties, partition of the premises amongst the

plaintiffs and the defendants in proportionate to their shares are not possible.

6. After the report of the Structural Engineer, the plaintiffs have filed an application being GA 10 of 2021 praying for sale of the suit property by public auction so that the parties are not deprived from their legitimate claim over the property. After filing of the said application, the defendant no. 3 has prayed before this Court to allow the defendant no. 3 to purchase the share of the plaintiffs at the present market price. As per the prayer made by the Counsel for the defendant no. 3, this Court has allowed the defendant no. 3 to purchase the share of the plaintiffs' and directed the Inspector General Registration and Commissioner of Stamp Revenue, West Bengal to submit the present market value of the suit property.
7. The Inspector General Registration & Commissioner of Stamp Revenue, West Bengal has submitted the present market value of the property showing the total valuation of Rs. 1,13,54,377/-. As per valuation the 1/4th shares of the plaintiff would come at Rs. 31,22,453.75/-. All the parties to the suit have accepted the valuation report submitted by the competent authority. After considering the valuation report, the defendant no. 3 had agreed to purchase the share of the plaintiffs in the suit property for a total sum of Rs. 36,00,000/-. The plaintiffs have also agreed to transfer their 1/4th share in the suit property in favour of the defendant no. 3 for a total sum of Rs. 36,00,000/-. The defendant

no. 3 had deposited the said amount before the Registrar, Original Side of this Court in terms of the order passed by this Court.

- 8.** On 5th August 2023, the plaintiffs have executed a Deed of Conveyance in favour of the defendant no. 3 with respect of undivided 1/4th share measuring 1323.25 sq.ft. on account of structure and the undivided proportionate of the land measuring 620.25 sq. ft. attributable to the said structure being Premises No. 31, Guru Prasad Chowdhury Lane, Kolkata -700006, Municipal Corporation Ward No. 038, Police Station – Amherst Street. The Deed of Conveyance is duly registered before the Additional Registrar of Assurances - III, Kolkata on 5th August, 2023.
- 9.** As the plaintiffs have relinquished their shares over the suit property by executing a Conveyance Deed in favour of the defendant no. 3 and now the defendant no. 3 is entitled to get his share i.e. 12.5 % along with the share of the plaintiffs as mentioned in the Conveyance Deed dated 5th August, 2023.
- 10.** The defendant no. 3 had submitted the copy of the Conveyance Deed dated 5th August, 2023. The parties have accepted the plan for proposed partition submitted by Partition Commissioner which is marked as Annexure “L” of the report of the Commissioner and the Conveyance Deed dated 5th August, 2023.
- 11.** In view of the above, final decree is passed by declaring that the defendant no. 3 is entitled to get 12.5% of his share along with the shares of the plaintiffs as mentioned in the Deed of Conveyance dated

5th August, 2023 and defendant nos. 2 and 4 are entitled to get 37.5% and 25% respectively in the suit premises.

12. C.S No. 91 of 2013 is thus **disposed of**. Consequently, **GA 10 of 2021** is also **disposed of**. Decree be drawn by making the proposed plan for partition being Annexure “L” of the Commissioner’s report and the Deed of Conveyance dated 5th August, 2023 as part of the Decree.

(Krishna Rao, J.)