

FA 15 of 2017

Anadish Kumar Pal (Paul)

Vs.

Smt. Hena Paul and Ors.

(since respondent no. 1 deceased)

Mr. Arijit Bardhan
Mr. Rishabh Dutta Gupta
... For the Appellant

Mr. Kaustav Banerjee
Ms. Ria Kundu
... For the Respondent no. 2(a)

Mrs. Sohini Chakraborty
Mr. Supriyo Ghosh
Ms. Prajnani Das
... For the Respondent nos. 2(b)(c)(d)

Mr. Soumyajit Mishra
... For the Respondent nos. 3 & 4

- 1.** The appeal is arising out of a decree in a partition suit by which the partition suit was dismissed as one of the co-sharers was not impleaded.
- 2.** In the appeal we found that the said co-sharer who ought to have been made party and the heirs of the original co-sharer were brought on record. During the pendency of the appeal it was alleged that one of the co-sharers, being the respondent no. 2, had transferred his share to a stranger without giving any opportunity of preemption to other co-sharers. On that basis, we passed an order of status quo. Now we feel that the partition suit can be heard and the

plaintiff can file an amendment application to bring on record the heirs of the said co-sharer.

We direct the learned Trial Judge to re-hear the suit on merits, after giving an opportunity to the plaintiff to implead the heirs of the deceased co-sharers and donees and permit the parties to file additional written statement consequent upon amendment.

- 3.** On such consideration, the appeal being FA 15 of 2017 stands disposed of. The impugned order is set aside.
- 4.** However, there shall be no order as to costs.
- 5.** The department is directed to send down the original TCR to the learned trial court forthwith.
- 6.** The parties shall appear before the learned Civil Judge, Senior Division, 10th Court, Alipur within two weeks from date.
- 7.** Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)

