

AD-52
Ct No.16
09.12.2024
(SSS)

FAT 326 of 2022
With
CAN 3 of 2023

Apurba Biswas and Anr.
Vs.
Shipra Bala

Mr. Saptarshi Kumar Kundu, Adv.
For the Appellant.

Mr. Kingsuk Mondal, Adv.
For the Respondent.

1. The present appeal has been preferred against a preliminary decree of partition passed on the premise that the parties are co-sharers in respect of the suit property.
2. The defendants/appellants herein moves the present application bearing CAN 3 of 2023 under Order XLI 41 Rule 27 of the Code of Civil Procedure seeking to bring on record additional documents to show that the property in question is a *patta* land and as such, the parties' title could not be declared in respect thereof, as the property vested in the State.
3. Learned Counsel appearing for the respondents opposes the prayer for production of such additional evidence on the ground that if the appellants were duly diligent, the documents in question could very well have been brought on

record in the court below. In support of his contention, learned Counsel for the respondents places reliance on the cross-examination of PW1 dated December 17, 2017, where a question was put to PW1 to the effect as to whether he can say whether his father got the 10 decimals of the suit property from the Government of West Bengal by way of a *patta*. According to the respondents, such suggestion in cross-examination by the appellants shows that they had knowledge of the *patta* at the relevant juncture.

4. Such contentions are disputed by learned Counsel for the petitioner.
5. However, upon a careful consideration of the annexure to the application under Order XLI Rule 27 of the Code of Civil Procedure, we find that lack of diligence might not be attributed to the appellants inasmuch as the appellants come from a section of society where the appellants might not be so acquainted with the nitty-gritties of law. More importantly, we are of the opinion that the provision of Order XLI Rule 27(1)(b) of the Code of Civil Procedure is attracted, since this Court is of the opinion that the appellate court requires the document for a proper and a complete adjudication of the *lis*, since it has vital bearing on the outcome

of the litigation and, if produced, has the potential to alter the outcome of the suit.

6. Hence, in order to enable the parties to adduce such evidence in accordance with law and for the legal effect of the same to be considered, it is required that the impugned judgment and preliminary decree be set aside and the matter remanded to the Trial Court to permit the parties to adduce such evidence. In fact, in the event the document is duly proved and comes on record, it may have a direct and substantial bearing on the outcome of the suit itself.
7. Accordingly, FAT 326 of 2022 along CAN 3 of 2023 are allowed, thereby setting aside the impugned judgment and decree dated March 9, 2022 passed by the learned Civil Judge (Senior Division), Ranaghat, District – Nadia in Title Suit No. 208 of 2014 whereby a preliminary decree of partition was passed, and remanding the matter to the learned Trial Judge for adjudication of the suit afresh upon giving opportunity to the defendants/appellants to prove the documents annexed to CAN 3 of 2023 and other relevant evidence, if any, relating to the suit property being an alleged *patta* land.
8. Upon such opportunity being given, needless to say, adequate opportunity of cross-examination shall also be afforded to the respondents. The learned

Trial Judge shall, upon adduction of such evidence, proceed to re-adjudicate the suit on all issues, if necessary.

9. In view of the long pendency of the matter, it is expected that the learned Trial Judge shall expedite such hearing as far as the diary of the said Court permits.
10. In view of the present judgment being a remand order, no formal decree need be drawn up.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)