

February 1, 2024
Sl. No.13
Court No.19
s.biswas

CO 4322 of 2023

Debasis Ghosh
vs.
Jayanta Ghosh and another

Mr. Sirsanya Bandopadhyay
Mr. Rahul Kumar Singh

... for the petitioner

Mr. Dyutiman Banerjee
Mr. Vishal Mallick

... for the opposite parties

This revisional application arises out of an order dated August 30, 2023 passed by the learned Civil Judge (Senior Division), 4th Court, Alipore, South 24 Parganas, in Title Suit No.1702 of 2022.

The issue is whether, on the admission of the defendants, a preliminary decree declaring the shares of each of the brothers in the suit property can be passed or not.

The learned court rejected the said application under Order 12 Rule 6 of the Code of Civil Procedure filed by the plaintiff on the ground that the defendants raised an objection in respect of such prayer. The learned court found that the suit was also for accounts and injunction.

Both the parties have appeared before this court. The admissions of the defendants in the several paragraph, especially 13 and 14 of the written statement, clearly indicate that the factum of the brothers being owners of the property in question, by way of a deed of gift executed by

parents, is admitted. Each of the brothers have 1/3rd share. Each of the brothers is enjoying respective floors as per an amicable arrangement. However, the admissions galore make it evident that this is a clear case for passing the preliminary decree declaring the share of the parties in respect of the suit property.

It is an admitted case that the mother is living in the first floor and shall continue to live in the same room in the first floor. Such declaration of share does not in any way amount to eviction of the mother.

The order impugned is set aside.

The learned court below is directed to pass a preliminary decree as a judgment upon admission on the basis of the plaint and the defence case, by declaring the shares. Thereafter, the learned court would proceed in accordance with law for partition of the property by metes and bounds.

The revisional application stands disposed of accordingly.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)