

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/187/2024
WITH
CS100038/1995
CS/365A/1995
IA NO: GA/1/2024

RADHESHYAM BHARTIA
VS
MANJU BHARTIA AND ORS.

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN
AND

The Hon'ble JUSTICE BISWAROOP CHOWDHURY
Date : 3rd December, 2024.

Appearance:

Mr. Jayanta Sengupta, Adv.
Mr. Sanjay Kumar Baid, Adv.
Mr. Sounak Bandyopadhyay, Adv.
...for the appellant

Mr. Mohit Gupta, Adv.
Mr. A.P. Agarwalla, Adv.
...for respondent nos. 1A and 1B

The Court: The appeal is arising out of an order dated 9th April, 2024 in an application filed by the plaintiff for an order appointing a fit and proper person as Commissioner of Partition in the instant suit and a direction upon the Commissioner of Partition to file a report identifying the properties described as Schedule-A and B of the plaint.

The learned Single Judge has accepted the objection raised by the defendant nos. 1A and 1B that without identifying the properties involved in the suit, no preliminary decree can be passed. The learned Single Judge was of the view that in terms of the order dated 22nd February, 2021 by the Co-

ordinate Bench, the issue as to whether properties described in Schedule-A and B of the plaint form the hotchpotch of the suit for partition is required to be decided by the Court and not by the Commissioner.

It is submitted on behalf of the plaintiff that there is no embargo created by the Co-ordinate Bench order dated 22nd February, 2021 with regard to the discretion of the Court to appoint a Partition Commissioner to go into all the questions.

Preliminary objection is raised by the respondents, namely, defendant nos. 1A and 1B with regard to the maintainability of the suit as it is submitted on behalf of the said defendants that this order is not appellable under Clause 15 of the Letters Patent. The order was passed in a pending partition suit for appointment of Advocate Commissioner. Ordinarily, when a preliminary decree is passed, the Court issues a timeline within which the parties are required to amicably partition the properties according to the declared shares, in default, the parties are given liberty to apply for appointment of a Partition Commissioner to divide the properties in accordance with the declared shares.

In the instant case, we find that the preliminary decree was passed in the following terms:-

“There will be a preliminary decree declaring that, the plaintiff along with the defendant No.1 series, and 2 to 4 have 1/6th share each. The defendant Nos. 5 and 6 have 1/12th share each in the suit property. The issue as to whether the suit properties as described in schedule A and B of the plaint can be brought within the scope and ambit of the suit for partition is left open at this stage”.

Whether the suit properties described in Schedule-A and B of the plaint form the joint family property and hence capable of partition is an issue that is required to be decided.

The learned Judge was of the opinion that in view of the expressions used in the order dated 22nd February, 2021, the Court is required to decide as to whether the suit properties can form the subject-matter of partition and only thereafter it can be divided in terms of the declared shares.

This order does not appear to be appellable as there is no finality attached to the said proceeding.

The Court is not precluded to decide on the said issues. It might have been open for the Court to appoint an Advocate Commissioner to file a report on Schedule-A and B properties of the plaint and on the basis of such report, the Court could have pronounced a decision on the said two properties. However, the jurisdiction of the Court to decide as to whether the said two properties belong to the joint family cannot be doubted.

On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.

The appeal fails. However, there shall be no order as to costs.

The connected application is disposed of.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)