

IA No: GA 1 of 2024
APOT No. 235 of 2024
with
CS No. 258 of 2023
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

Ashok Kumar Pasari
Versus
Usha Pasari & Ors.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 27th June 2024

Appearance:
Mr. Mainak Bose, Advocate
Mr. Ayan Dutta, Advocate
Mr. A. Jain, Advocate
for the appellant

Mr. Reetobroto Mitra, Advocate
Ms. Madhupriya, Advocate
Ms. Gitika Agarwal, Advocate
for the respondent

Mr. Supratim Laha, Advocate
Mr. Binoy Kr. Jain, Advocate
for respondent nos. 2-5

The Court: Order in terms of prayer (a) of the stay petition.

Having heard learned counsel for the parties, we think that we are in a position to dispose of the appeal and the stay application dispensing with all formalities.

This is an appeal from a judgment and order dated 24th May 2024 by a learned single judge of this court, dismissing the application of the appellant/defendant no.9 under Order VII Rule 11 of the Code of Civil Procedure.

The principal grounds taken in that application, as it appears from the submissions made, were that there was no existence of any joint family property, no property was held jointly by the parties and other connected or collateral issues. For those reasons the suit for partition and administration was not maintainable.

Learned judge dismissed the application inter alia on the ground that the “factual matrix” had to be “established in evidence on trial. This is too early stage of the suit to consider the application of the relevant principle of law”.

We are concerned with the jurisdiction of the court. If the properties are joint family property or jointly owned by the parties, the court has the jurisdiction to try the suit. If that is not so, the court does not have jurisdiction and the suit would instantly fail.

If a jurisdictional issue is involved and in determining it question of facts need to be investigated, it would be proper if those facts are determined as early as possible as a preliminary issue. On such determination the court would be able to declare whether it has or has not jurisdiction to entertain, try and determine the suit.

The above facts are jurisdictional and should be determined by the court as a preliminary issue. On the basis of the decision of the court on the preliminary issue the suit may be disposed of or the other issues may be tried.

We direct accordingly.

We clarify that any interim application, pending or to be filed in future, may be dealt with on the basis of the prima facie case, balance of convenience factors, which would necessarily include the prima facie case made out on the jurisdiction of the court to try the suit.

The impugned judgment and order is modified to the above extent.

The appeal and the stay application are disposed of.

As affidavits were not invited, allegations contained in the stay application are deemed to have been not admitted.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

R. Bose