

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

FA 50 of 2019

Raj Kumar Ghosh
Vs.
Uday Majumdar and others
With

FA 93 of 2025

Uday Ghosh @ Uday Chand Ghosh and others
Vs.
Rajkumar Ghosh and others

For the appellants
in both the matters : Mr. Probal Kr. Mukherjee, Ld. Sr. Adv.,
Ms. Shebatee Datta

For the respondents
in both the matters : Mr. Samriddha S. Sen,
Ms. Bidisha Chakraborty

Heard on : 27.03.2025

Judgment on : 27.03.2025

Sabyasachi Bhattacharyya, J.:-

1. Both the present appeals have been preferred against the same judgment and preliminary decree passed in a partition suit, respectively by the plaintiff and by defendant nos. 8 to 12.

2. By the impugned judgment and preliminary decree, the learned Trial Judge has declared the title and possession of the parties as well as the respective shares of the plaintiff and the defendants.
3. Upon hearing learned counsel for the parties and on a perusal of the impugned judgment and decree, however, we find that although the learned Trial Judge proceeded correctly up to a certain extent in adjudicating on the subject properties which were transferred by virtue of some of the exhibited deeds, there is a gap between the adjudication of the title of the parties and their possession and the quantification of the respective shares of the parties.
4. We find that there is no basis and/or reason attributed whatsoever in the impugned judgment as to allocation of particular shares to each of the parties. The learned Trial Judge observed that the plaintiff owns 1.5 decimals of land whereas the defendant nos. 2 to 12 have 2.25 decimals of land. It was further held that the defendant nos. 1(a) to 1(f) own share to the extent of 52.82 decimals of land, the defendant nos. 15 to 20 jointly own 19.66 decimals of land and the defendant nos. 13 and 14 jointly own 0.75 decimal of land. Apart from the fact that it is evident from Exhibit 3, Exhibit 5 and from the subsequent devolution of title that the plaintiff could not be granted share below 2.25 decimals of land (he has been allotted 1.5 decimals in the impugned judgment), there is no basis disclosed in the impugned judgment as to how the learned Trial Judge calculated the shares of the other parties as well.

5. Hence, the impugned judgment and decree are vitiated due to lack of reasons for determination of the shares of the parties.
6. Accordingly, FA 50 of 2019 and FA 93 of 2025 are allowed on contest, thereby setting aside the impugned judgment and decree and remanding the matter to the learned Trial Judge for a fresh adjudication of the suit upon giving a further opportunity of hearing to the parties, on the basis of the evidence already on record.
7. It is expected that such fresh adjudication shall be concluded as expeditiously as possible, preferably within six months from the date of communication of this order to the learned Trial Judge.
8. There will be no order as to costs.
9. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)