

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FA 132 of 2025
With
CAN 1 of 2025

Bhaskar Chandra Chandra and Anr.
Vs.
Sri Shyama Prasad Bandyopadhyay

For the Appellants : Mr. Partha Pratim Roy
Ms. Poulami Chakraborty.

For the Respondent/
Opposite Party : Mr. Subhendu Bandyopadhyay,
Mr. Arindam Mitra
Mr. Arka Mondal

Heard on : May 6 2025.

Judgment on : May 6, 2025.

Sabyasachi Bhattacharyya, J.:

1. When we take up the application for hearing, learned Counsel appearing for the respondent points out that the ad interim order previously passed in connection with the injunction application by this court was obtained on a misrepresentation before the court.

2. It appears from the order of this court dated April 7, 2025 that the premise of the said order was the submission of the appellants that the appeal has been preferred against the dismissal of the appellants' partition suit on the ground that a pre-emption order had been passed under Section 8 of the West Bengal Land Reforms Act in favour of the respondent.

3. However, the fact was just the reverse. The respondent himself had filed a partition suit and simultaneously an application under Section 8 of the West Bengal Land Reforms Act, for getting pre-emption of the property in question on the ground that the respondent is a co-sharer.

4. This Court, in revision, directed the two suits to be heard together and the pre-emption case was directed to be decided first. In consonance thereof, the pre-emption case of the respondent was

decided first and allowed in favour of the respondent herein. Consequentially, the respondent's suit for partition was dismissed, since, by virtue of the pre-emption order, the respondent had become the exclusive owner of the property.

5. We find, upon hearing learned Counsel for the parties that undoubtedly, the order dated April 7, 2025 was obtained by misrepresentation on the part of the appellants. Not only was it submitted that the appeal arose from dismissal of the partition suit of the appellants, we also find from the grounds taken in the appeal that the appeal has been also filed on the same premise. In fact, the very first ground in the memorandum of appeal is that the learned court below erred in dismissing the suit filed by the *appellants* without considering the materials on record.

6. Thus, we find that the order dated April 7, 2025 was passed by way of misrepresentation and as such, ought to be vacated on such ground alone. Consequentially, we vacate the order dated April 7, 2025.

7. On a more basic premise, we find that the present appeal is not maintainable at all at the behest of the defendants/appellants. The appeal has been preferred against the dismissal of a suit for

partition filed by the respondent and as such, the decree went against the respondent and not against the appellants.

8. Learned Counsel for the appellants seeks to impress upon the court that the appellants are aggrieved by certain findings in the judgment of the trial court. However, it is well-settled that no appeal lies merely against findings of the impugned judgment, if the decree itself went in favour of the appellants. Thus, the present appeal is not maintainable at all at the behest of the appellants.

9. It would be unnecessary and a wastage of valuable time of the litigants and the court if the appeal is kept pending, despite us having held that the same is not maintainable. Thus, although the matter is appearing in the cause list today for hearing of the application, in view of our above observations, nothing remains to be decided in the appeal.

10. Accordingly, FA 132 of 2025 is dismissed as not maintainable.

11. Consequentially, the connected application, being CAN 1 of 2025, is also dismissed.

12. There will be no order as to costs.

13. Urgent photostat certified copy of the judgment and order, if applied for, be supplied to the parties at an early date.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)