

D/L10
17.06.2025
Rohit
ct.no.08

FA 203 of 2012

**Gita Rani Pal & Ors.
Versus
Premodini Pal & Ors.**

Mr. Partha Pratim Ray
Ms. Sarbananda Sanyal

...for the appellant

Mr. Pratip Kumar Chatterjee, Sr. Adv
Mr. Ashish Deb
Ms. Maitrayee Chatterjee, Adv

...for the respondent

nos. 1(b), 1(c), 1(d), 1(e), 1(g),
2(a), 2(c), 2(d), 3 and 5

1. In a partition suit the learned Single dismissed the suit on the ground that the subject matter in the present partition suit is fully decided in a previously instituted partition suit being TS 184/79.
2. The learned Trial Court is of the view that all the issues raised in the present partition suit has been decided in the previously instituted suit and relying upon Exhibit 1/3 the partition suit was dismissed.
3. The preliminary decree passed in the previous suit was modified by the Civil Judge, Senior Division as would appear from the authoritative portion of the said decree :-

“ that the instant appeal be and the same is allowed on contest in part to the extent of ‘Uma’ scheduled properties. The concerned parties are entitled to possess and enjoy the ‘Uma’ scheduled property on the basis of their possession and share. The judgment and decree passed by the Lower Court below in respect of the ‘Ga’ and ‘Gha’ schedule properties of the plaint are hereby affirmed. The concerned parties are hereby directed to follow the judgment and decree passed by the Lower Court below excepting ‘Uma’ scheduled properties of the plaint i.e. no partition by metes and bounds be taken place over ‘Uma’ scheduled properties of the plaint, but they will make partition of the ‘Uma’ scheduled property on the basis of possession and according to their share amicably.

The concerned parties will be at liberty to make the preliminary decree in to final form by way of invoking the survey passed commission in respect of the partition by metes and bounds of the ‘Ga’ and ‘Gha’ schedule properties of the plaint.”

4. It clearly states that the ‘Uma’ scheduled property is required to be partitioned on the basis of possession and according to their shares amicably. The partition commissioner filed the

report only in respect of 'Ga' and 'Gha' property and not in respect of 'Uma' scheduled property.

5. In the event it is find that the property involved in the present partition suit covers 'Ga' and 'Gha' as well then certainly those properties are required to be executed from the purview of the second partition suit as would operates as Res judicata. However, having regard to the observations made by the Civil Judge, Senior Division in disposing of the appeal being FMA No. 203 of 2012 the issue in respect of 'Uma' scheduled property is required to be decided in the second suit.
6. On such consideration we allow the appeal. The decree is set aside.
7. The learned Trial Court is directed to decide the suit only in respect of 'Uma' scheduled property mentioned in the earlier suit provided the schedule of 'Uma' property is as same in the present suit. In the event, however it is found that the suit properties are identical then it is needless to mention that the present suit would be barred by res judicata.

(Soumen Sen, J.)

(Smita Das De, J.)