

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 Subhendu Samanta

F.A. 93 of 2023

Sri Sasanka Bose and others
Vs.
Smt. Ruma Bose and others

For the appellants : Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Tapas Chatterjee
Heard on : 08.01.2025
Judgment on : 08.01.2025

Sabyasachi Bhattacharyya, J.:-

1. We find from the affidavit-of-service filed today that service of the paper books has been substantially effected on the respondents. However, none appears for the respondents at the time of call.
2. The appeal itself is, thus, taken up for hearing ex parte.
3. The conspectus of the present appeal is very limited.

4. The plaintiffs/appellants filed a partition suit, which was dismissed by the impugned judgment and decree.
5. In terms of the pleadings of the appellants, which were admitted by the respondents/defendants nos. 1 to 3 in their joint written statement, the suit property originally belonged to the predecessor-in-interest of the parties, namely one Panchanan Bose (since deceased).
6. Late Panchanan had become the owner of the property by virtue of a registered deed of partition dated September 18, 1942, which was marked as Exhibit-1 in the suit.
7. Upon subsequent demise of some of the heirs of late Panchanan, the property has devolved on the present parties.
8. Accordingly, partition was sought by the plaintiffs/appellants.
9. The plaint was amended subsequently, reflecting the respective shares of the parties as depicted in the written statement.
10. We find from the written statement filed by defendant nos.1 to 3 that no substantial demur has been raised against the contention of the plaintiffs that late Panchanan was the original owner of the property by virtue of the registered partition deed of 1942 and that the suit property has devolved jointly on all the parties to the present litigation.
11. The only contention raised in the written statement was regarding the erroneous mention of calculation of shares in the

original plaint, which was taken care of by rectifying the shares in the plaint by way of the subsequent amendment to the plaint.

12. The shares of the parties, as reflected in the amended plaint, mirror that disclosed in the written statement.
13. Hence, the parties are *ad idem* with regard to the respective shares of the parties to the suit property as well.
14. The learned Trial Judge, however, despite recording that late Panchanan had become the absolute owner of the property by way of the registered deed of partition dated September 18, 1942 and that the death certificate of the said Panchanan was filed (Exhibit-3), dismiss the suit *ex parte* merely on the premise that the plaintiffs have not filed any R.S. Parcha or L.R. Parcha and/or any document to show that their names have been recorded as co-sharers by the concerned authority and/or that they are in possession of the suit property.
15. We find from the records that the joint title of the parties to the suit property is undisputed and has not been disbelieved by the learned Trial Judge.
16. The only yardstick on which the Trial Judge relied on to dismiss the suit was that the parties have failed to produce any R.S. Parcha or L.R. Parcha and/or any document of possession. Such parameter, however, is entirely extraneous and irrelevant for the purpose of deciding a partition suit in view of the title of the parties to the suit property having been established by cogent

document and the joint ownership of the property having been admitted by the parties.

17. Thus, we find that the impugned judgment and decree are tainted by patent error of law and as such ought to be set aside.
18. Accordingly, F.A. 93 of 2023 is allowed without costs, thereby setting aside the impugned judgment and decree dated March 4, 2022 passed by learned Civil Judge (Senior Division), First Court at Howrah, District: Howrah in Title Suit No. 34 of 2014 and remanding the matter to the learned Trial Judge for a fresh adjudication on the basis of the documents and evidence already on record.
19. The learned Trial Judge shall now pass a preliminary decree on the basis of the respective shares of the parties as disclosed in the written statement as well as the amended plaint.
20. It is expected that such exercise shall be concluded at the earliest and a preliminary decree of partition shall be passed according to the shares of the parties as indicated above within two months from the date of communication of this order to the trial court.
21. Thereafter, the learned trial Judge shall proceed to appoint a Partition Commissioner and to pass a final decree upon giving opportunity to the parties to file objection to the Commissioner's report and to examine the Commissioner, in accordance with law.

22. Interim order, if any, stands vacated.
23. The trial court records be sent down at the earliest by special messenger at the cost of the appellants, to be deposited within a week from date.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Subhendu Samanta, J.)

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