

21.08.2025
SI No33
Court No.16
(gc)

**FAT 247 of 2025
CAN 1 of 2025**

**Gopal Kumar Sen
Vs.
Gour Sen**

Mr. Subrata Kumar Dutt,
Mr. Sankha Subhra Dutta
...for the Appellant.

1. The preliminary decree in a partition suit is the subject matter of challenge in this appeal. At the outset, we must agree that the Trial Court could not have disposed of the suit merely on the basis of the preliminary decree as under Order 20 Rule 18 of the Code of Civil Procedure, the preliminary decree has to follow the final decree if the parties have failed to amicably divide the properties amongst themselves in terms of the preliminary decree. To that extent, we agree with the submission made on behalf of the appellant.
2. The plaintiff and the defendant are the brothers. In a suit for partition, the plaintiff has claimed undivided half share in respect of A and B Schedule properties. The defendant in the written statement has stated that A Schedule property was actually purchased by him and he paid the entire consideration. At

the trial, he failed to establish that he paid the entire consideration.

3. Moreover, the other obstacle was the deed itself which records the name of Doli Sen, Gour Sen and Gopal Sen as the vendees. By reason of Section 4 of the Benami Transaction (Prohibition) Act, 1988 as amended, it was no more open for the appellant to contend that although the properties may stand in the name of a different individual, the actual ownership resides with the appellant. Hence, the appellant has failed to establish his absolute right in respect of A Schedule property. The joint ownership of the properties being established both in respect of A and B Schedule property, in our view, the learned Trial Court was justified in declaring the parties as co-owner of undivided half share in respect of A and B Schedule property. The evidence of the defendant during trial that he along with the plaintiff was the joint owner of the share in respect of A and B Schedule property was also taken into consideration by the learned Trial Court.
4. Accordingly, while we do not find any reason to interfere with the decree passed by the learned Civil Judge (Sr. Div.), 1st Court, Howrah, however, we direct the learned Trial Court to

pass a decree in terms of Order 20 Rule 18 of the Code of Civil Procedure and keep the suit alive till the acceptance of the report by the Commissioner.

5. Accordingly, the appeal and the application are disposed of.
6. However, there shall be no order as to costs.
7. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Apurba Sinha Ray, J.)