

Item-
14. 03-09-2025

FMA 1263 of 2025
CAN 2 of 2025

sg Ct. 16

Kamal Krishna Khatua
Versus
Bishnupada Roy & Ors.

Mr. Kishore Mukherjee

...for the appellant

Mr. Pradip Saren

Mr. Soumik Ghosh

Ms. Saheli Hembrom

...for the respondents

1. Prima facie, it appears that by reason of the decree in Title Deed No. 162 of 1962, the defendants have acquired certain right, title and interest of the property in question. The said decree is not under challenge.
2. The issues decided in the said suit would operate as *res judicata* between the successor interest of the parties. The learned Trial Court has also felt that co-sharer may not be restrained from enjoying in the property in the way he likes and more so, since the issues with regard to rights to the property have already been adjudicated in the previously instituted suit being Title Suit No. 162 of 1962, which has attained finality in the appeal preferred before this Court on the basis whereof the B.L.& L.R.O. after hearing, recorded the names of the defendants, we permit the respondents to file an application before the learned Trial Court for permission to raise construction in the portion of the area presently in their occupation upon obtaining all statutory permissions if they so desire and in disposing of such application the learned Trial Court may dispose of the said application without creating any

equity in their favour following the decisions of the Division Bench of this Court i.e. *Shrimati Satu Bala Dassi & Ors. Vs. Chaturanandan Saha & Ors.* reported in *(2014) 3 WBLR (Cal) 318* and in the case of *Sanghati Pal vs. Prakash Adhuryya & Ors.* reported in *2009(2) CLJ (Cal) 153*.

3. The appeal and the application are, accordingly, disposed of.
4. The parties shall not interfere with each other's possession.
5. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Apurba Sinha Ray, J.)