

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 No. 91 of 2022

Kamal Dalui

-vs-

Nirmal Kumnar Dalui and others

For the appellant : Mr. Anil Kumar Chattopadhyay.

For the respondent no. 1 : Mr. Sudip Deb, Senior Advocate,
Ms. Ipsita Ghosh.

Heard on : July 10, 2025.

Judgment on: July 10, 2025.

Sabyasachi Bhattacharyya, J.:

1. The present appeal has been preferred against a final decree of partition.
2. Learned counsel for the appellant contends that the Partition Commissioner's report was accepted behind the back of the appellant.

3. Moreover, it is submitted that the defendant no. 1/appellant did not have any notice of the commission work.
4. Learned senior counsel for the plaintiff/respondent no. 1 vehemently opposes such contentions and submits that the Partition Commissioner's report itself reflects that notice was served on the defendant no. 1/appellant at every stage.
5. That apart, neither any written objection was filed to the Partition Commissioner's report nor was any prayer made by the defendant no. 1/appellant to cross-examine the Partition Commissioner.
6. Learned senior counsel adds that the impugned final decree of partition has already been executed and his articles have been handed over to the defendant no. 1/appellant.
7. We find from a bare perusal of the Partition Commissioner's report that notice of commission work was served at every point of time on the learned Advocate for the plaintiff as well the defendants.
8. In the event the defendant no. 1/appellant deliberately chose to abstain from the commission work despite notice, it is not the fault either of the court or the plaintiff that the Partition Commissioner had to proceed in the absence of the defendants.

9. Apart from such frivolous plea of non-service of notice, the appellant does not make out any other infirmity in the Partition Commissioner's report or the final decree.
10. It is trite law that a presumption of validity is raised in favour of official and judicial acts.
11. Thus, we do not find that, in the absence of any rebuttal by cogent evidence in that regard, as to why the recording in the Partition Commissioner's report that notices were served on the defendant no. 1/appellant should be disbelieved or disregarded.
12. On a perusal of the Partition Commissioner's report, we find that the Partition Commissioner dealt with the respective shares of the parties fully in adherence with the preliminary decree and allocated the property in accordance with law upon a proper valuation on valid bases in respect of the shares of each of the parties in the suit property.
13. Furthermore, since no written objection was filed to the Partition Commissioner's report by the appellant, nor was any prayer made for cross-examination of the Partition Commissioner, we also do not find any other ground for interference with the impugned judgment and final decree of partition.

14. We reiterate that a perusal of the Partition Commissioner's report and the map annexed thereto clearly reflects a proper demarcation of the specific allotted portions of the parties fully in consonance with the preliminary decree, which remains unchallenged and has attained finality.
15. Thus, there is no scope of interference in the present appeal.
16. Accordingly, FA No. 91 of 2022 is dismissed on contest without any order as to costs, thereby affirming the judgment and decree dated October 6, 2018 passed by the learned Civil Judge (Senior Division), Second Court at Howrah, District: Howrah in Title Suit No. 100 of 2012.
17. A formal decree be drawn up accordingly.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)