

AD- 16
Ct No.16
18.02.2025
(SSS)

FA 88 of 2025
With
CAN 2 of 2024

Kaustubh Moni Pal
Vs.
Sri Kaushik Pal

Mr. Balai Lal Sahoo,
Mr. Sankha Prasad Ray
....For the Appellant.

Mr. Samir Kumar Chakrabarti,
Mr. Shambhunath Bhattacharya
....For the Respondent.

1. While hearing the application for stay, we find that the appeal has been preferred against a final decree of partition. The grievance of the appellant is that the learned Trial Judge passed a final decree of partition which is impugned herein, without taking into consideration the written objection to the Commissioner's report filed by the present appellant as well as without granting any opportunity to the plaintiff/appellant to cross-examine the Commissioner.

2. Learned Counsel appearing for the respondent takes an extremely fair stand and submits that he has no objection if the appeal itself is taken up for

hearing in view of the limited question involved and to a remand on such limited point.

3. Accordingly, we take up the appeal itself, along with the application, for hearing by dispensing with formal preparation of paper books and without calling for the records.

4. Upon hearing learned Counsel for the parties, we find substance in the contention of the appellant. Hence, FA 88 of 2025 along with CAN 2 of 2024 are disposed of by setting aside the impugned judgment and decree and remanding the matter to the learned Trial Judge. The learned Trial Judge shall, upon consideration of the written objection filed by the plaintiff/appellant to the Partition Commissioner's report and granting opportunity to the parties to cross-examine the Partition Commissioner, as well as giving an opportunity of hearing to the parties on the Partition Commissioner's report, pass a fresh final decree of partition.

5. It is made clear that the merits of the contentions of the parties otherwise have not been entered into by this court and it will be open to the learned Trial Judge to decide all such issues independently in accordance with law without being influenced in any manner by any of the observations made above. In view of the long pendency of the suit, it is expected that the learned Trial Judge shall

expedite the hearing of the suit after remand as far as the business of the said court permits.

6. No order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)