

D/L. 33
March 4, 2025
MNS

SAT No. 245 of 2024
+
CAN 1 of 2024

Bishewahar Dawn and others
Vs.
Maloy Dawn and another

Mr. Sudeep Sanyal,
Mrs. Tutun Das,
Mr. Chandrachur Lahiri

....for the appellants.

Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray

...for the respondents

1. The present second appeal has been preferred against a judgment of affirmance, whereby the first appellate court has affirmed the preliminary decree passed by the trial court in a suit for partition.
2. Learned counsel for the respondents, by placing reliance on a written objection filed by the appellants in the trial court, as referred to in our order dated February 26, 2025, submits and reiterates that in view of the admission of the defendant/appellants in such objection that they would assist the learned Partition Commissioner for holding the commission work and abide by the preliminary decree, which is the subject-matter of challenge before this court, the present appeal against such preliminary decree at their behest is not maintainable.

3. A copy of the said written objection was handed over to us on the last occasion. Learned counsel for the appellants rightly contends that the appellants, in the said objection, merely stated that they were always ready and willing to assist the learned Commissioner for holding the commission work, though they have never disturbed and/or put up resistance to the commission work on earlier occasions. As also rightly contended by learned counsel for the appellants, we find that the said “admission” was made in the context of a police help application. Learned counsel for the appellants submits that the appellants being aged persons of some repute in the locality, wanted to avoid the ignominy of police presence at the premises and, as such, merely stated that they would assist the commission work and no police was required to be deployed.
4. We do not find within the four corners of the said written objection to the police help application filed by the respondents, which is kept on record, that at any point of time the appellants conceded to the preliminary decree which is in challenge before this court. Rather, the statements made in the objection were only to the effect that no resistance to the commission work would be offered by the appellants, on which ground they sought to avoid police being deployed at the premises. Thus, the said written objection *per se* does not tantamount to an admission of the correctness and legality of the impugned judgment and decree and, as such, cannot be a bar to the present appeal.

5. Hence, the second appeal is taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.
6. Learned counsel for the appellants submits that, according to the plaint case, the property is a *thika* tenancy.
7. It is contended on behalf of the appellants that in terms of Section 5(3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 [in short “the 2001 Act”], read with Rule 3(H) of the corresponding Rules, it is for the Thika Controller to measure the thika properties as well as to ensure that the land boundaries are kept intact.
8. Hence, it is contended that the suit is barred by the provisions of the 2001 Act and the corresponding Rules, since it is the Thika Controller under the said Act, and not the civil court, which has exclusive jurisdiction to decide the issues raised in the suit.
9. We find from the judgments of both the courts below, particularly the First Appellate Court, that the said contentions have been dealt with extensively by both the courts. The learned First Appellate Judge as well as the learned Trial Judge proceeded on the premise that the suit is not barred under the provisions of the 2001 Act.
10. We agree with such concurrent findings, since the corresponding Rules framed under the 2001 Act come into play only if the jurisdiction of the Thika Controller is invoked in the first place, which can only happen if there is a dispute as to whether a person is a thika tenant or whether the land-in-question is a thika land within the contemplation of Section 5(3) of the 2001 Act.

11. In the present case, the scope of adjudication in the partition suit is merely to declare the respective title and shares of the parties to ensure partition within the periphery of the boundaries of the suit property.
12. Thus, in the first place, the jurisdiction of the Thika Controller is not invoked, since the dispute does not pertain to a question as to whether the suit property is a thika land or not. The plaintiffs/respondents have claimed such suit property to be a thika land, regarding which no specific dispute has been raised by the defendants/appellants which is required to be adjudicated.
13. Moreover, the Thika Controller has limited jurisdiction under the 2001 Act and the corresponding Rules and is not competent to decide questions of title and partition, which are invariably involved in adjudication of a partition suit.
14. As such, the suit cannot be said to be barred by any of the provisions of the 2001 Act and/or the Rules framed thereunder.
15. Thus, both the trial court and the first appellate court were justified in law in assuming jurisdiction and passing the impugned preliminary decree of partition.
16. Accordingly, we find that no substantial question of law is involved in the present second appeal.
17. Hence, SAT No. 245 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
18. Consequentially, CAN 1 of 2024 also stands dismissed.
19. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)