

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Prasenjit Biswas**

**FMA 19 of 2025
with
IA No.: CAN 1 of 2024
with
IA No.: CAN 2 of 2025
Masud Sk.
Vs.
The State of West Bengal & Ors.**

For the Appellant : Md. Sarwan Jahan, Advocate
Mr. Ashraful Huq, Advocate
Ms. Tapati Sarkar, Advocate

For the State respondents: Mr. K.J. Yusuf, Ld. AGP
Ms. Rupsha Chakraborty, Advocate

For the added Respondents: Mr. Pritam Choudhury, Advocate

Hearing & Judgment on : July 28, 2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the writ petitioner and directed against order dated November 11, 2024 passed in WPA 25035 of 2024.
2. In the appeal, there are two applications.
3. IA No.:CAN 1 of 2024 is at the behest of the appellant by which, appellant seeks appropriate orders in the appeal.

4. IA No.: CAN 2 of 2025 is at the behest of persons claiming right, title and interest in respect of an immovable property and seek themselves to be added as party respondents in the present appeal.
5. IA No.: CAN 2 of 2025 is taken up for consideration since the applicants therein seek to be added as party respondents in the pending appeal.
6. Applicants claim to be the owner of 15.033 decimal of Plot No.1905. Applicants claim that, the appellant obtained a sanctioned building plan in respect of Plot No.1905 surreptitiously. Moreover, there is a suit for partition pending before the Civil Court in respect of Plot No.1905. Consequently, the applicants in IA No.: CAN 2 of 2025 are necessary and proper parties in the present appeal.
7. State is represented.
8. Learned Advocate appearing for the State refers to its report and submits that, the portion of land over which the appellant claims title is demarcated by a brick built wall.
9. Since the applicants in IA No.: CAN 2 of 2025 claim right, title and interest in respect of CS Plot No.1905 to the extent of 15.033 decimal out of 41 decimal of such plot and since the appellant before us claims 9 decimal out of 41 decimal in respect of the same plot and since the reliefs sought for in the writ petition and in the appeal relates to such plot, we deem it appropriate to add the applicants of IA No.: CAN 2 of 2025 as party respondents in the present appeal.

10. Learned Advocate-on-record appearing for the appellant is granted leave to amend the cause-title of the memorandum of appeal accordingly.
11. By consent of the parties, the appeal is taken up for final hearing.
12. Appellant is aggrieved, as noted above, by the order dated November 11, 2025 by which, learned Single Judge allowed the appellant to approach the jurisdictional Court for appropriate relief after noting that, there is a suit for partition pending.
13. Learned Advocate appearing for the appellant submits that, initially when the appellant approached the Writ Court, there was a suit for partition pending. Such suit for partition was by the vendors of the added private respondents. However, such suit for partition was allowed to be dismissed for default by the vendors of the added private respondents. Subsequently, the added private respondents filed the present suit for partition. He draws the attention of the Court to the manner in which the title to the immovable property devolved upon his client. He submits that, the added private respondents claim title through the predecessor-in-interest of such added private respondents who were the plaintiffs to the earlier suit for partition. Such suit for partition, he points out, was allowed to be dismissed for default.
14. Learned Advocate appearing for the appellant submits that, there subsists a sanctioned building plan in respect of the property in question.

15. Learned Advocate appearing for the added private respondents submits that, pendency of the suit for partition and more particularly, since the Plot No.1905 is yet to be demarcated by metes and bounds amongst various co-sharers of such plot, no order should be passed in favour of the appellant.
16. Appellant and the added private respondents before us claim right, title and interest in respect of Plot No.1905. Plot No.1905 comprises of 41 decimal. Appellant claims 9 decimal while the added private respondents claim 15.033 decimal therein. Therefore, there are other co-sharers in respect of the property in question apart from the appellant and the added private respondents.
17. There is a suit for partition pending in which, the added respondents claim 15.033 decimal and partition by metes and bounds of such Plot No.1905.
18. Appellant is a party to the pending suit for partition. There are other persons who are parties to such suit for partition. Coordinate Bench called upon the State to submit a report which the State did. In such report, it appears that, 9 decimal of land which the appellant claims ownership of is demarcated by a boundary wall.
19. Records placed before us establish that, there is a plan sanctioned by the concerned Panchayat for construction in favour of the appellant.
20. In such circumstances, wholly without prejudice to the rights and contentions of the parties in the suit for partition, it would be

appropriate to permit the appellant before us to construct in accordance with the sanctioned plan in respect of 9 decimal of land as demarcated by the boundary wall. It is clarified that, such construction will not create any equity or right, title and interest in favour of the appellant other than what the appellant already enjoys prior to the construction as permitted by us. The entire construction and the area on which the construction will be erected, will be subject to the decision of the pending suit for partition. Impugned order stands modified to such extent.

21. It is clarified that, none of the observations made herein will prejudice any of the parties to the suit for partition.
22. **FMA 19 of 2025** along with connected applications are disposed of without any order as to costs.

(Debangsu Basak, J.)

23. I agree.

(AD)

(Prasenjit Biswas, J.)