

AD-08
Ct No.10
14.07.2025
TN

SAT 580 of 2016
IA No: CAN 1 of 2017
(Old No: CAN 1460 of 2017)
CAN 2 of 2024

Sri Manoranjan Pal
Vs.
Sri Tapan Kumar Mandal and others

Mr. Avijit Chakraborty

....for the appellant

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,
Mr. Samrat Chakraborty

....for the respondents

1. The present appeal has been preferred against a judgment of affirmance, whereby both the courts below have been pleased to respectively pass and affirm a preliminary decree of partition.
2. Learned counsel for the appellant argues that the suit is hit by Section 34 of the Specific Relief Act. We also find that before the Appellate Court, an objection as to the suit being barred by Section 80 of the Code of Civil Procedure was taken by the defendant no.1/appellant.
3. Both the courts below concurrently turned down such pleas, against which the present second appeal has been preferred.
4. In fact, the First Appellate Court imposed costs of Rs.50,000/- on the appellant.

5. We find from a careful perusal of the judgments of both the courts below that both the grounds taken by the appellant are flimsy.
6. Insofar as the proviso to Section 34 is concerned, we do not find any reason to hold such issue in favour of the appellant, since the suit was filed for partition, which implicitly includes a prayer for declaration of title and a prayer for final decree of partition whereby the property would be distributed among the parties according to their shares.
7. Hence, there is no further relief which could have been sought but was not claimed by the plaintiff. Thus, the proviso to Section 34 of the Specific Relief Act is not attracted.
8. Insofar as the plea under Section 80 of the Code of Civil Procedure is concerned, the same is equally specious.
9. The appellant apparently took a plea that the matter pertained to entries in the Record of Rights and the question as to bargadarship was involved and, as such, the Block Land and Land Reforms Officer should have been impleaded and served with a notice under Section 80 of the Code of Civil Procedure. However, we do not find from the records any evidence to substantiate such contention of the appellant that an issue as to bargadarship was involved. Rather, both the courts below came to concurrent findings as to the respective title and shares of the parties.

10. That apart, no relief was and could be sought against the State or its instrumentalities in a suit for partition *inter se* the co-sharers of the suit property, thus obviating the applicability of Section 80 of the Code of Civil Procedure.
11. Hence, we do not find any substantial question of law involved in the appeal.
12. Accordingly, SAT 580 of 2016 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
13. Consequentially, CAN 1 of 2017 (Old No: CAN 1460 of 2017) as well as CAN 2 of 2024 are also dismissed.
14. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)