

21.11.2025.
Court No.13
Item No. 5
ap

**F.M.A. No. 1345 of 2011
With
I.A. No. CAN 1 of 2025**

**Md. Sirajul Haque
Versus
Reziya Khatoon & Ors.**

Mr. Lutful Haque,
Ms. Anita Khatri,
Ms. Taharima Khatun.

...For the appellant.

1. It appears that by an order dated 27th October, 2025, a Co-ordinate Bench of this Court has recorded that paper books have been served on the Advocate for the respondents. Receipts of the same are kept with the record.
2. Notice issued to the appellant prior to mentioning of this matter for listing is also kept with the record.
3. The instant miscellaneous appeal is directed against the judgment and order dated 19th August, 2006 passed by the learned Additional District Judge, Basirhat, North 24 Parganas in Title Appeal No. 25 of 2006. Such appeal was directed against a judgement and decree dated 23rd July, 2004 passed by the Civil Judge (Junior Division) in T. S. No. 45 of 1992. The suit is for partition.
4. The appellant before this Court was the plaintiff, who sought partition of 16 ½ satak of land.

5. Admittedly, the predecessor-in-interest of the appellant/plaintiff is one Ayub Ali Mondal claims to have sold initially 7 decimals of land and subsequently 10 decimals of land from other sources.

6. The plaintiff thereafter re-conveyed 7 decimals of land back to Ayub Ali Mondal. Ayub Ali Mondal thereafter transferred the land to his sister, Momena Bibi. Momena Bibi subsequently gifted 10 decimals of land to the plaintiff. The defendant purchased 2 decimals of land from Ayub Ali Mondal.

7. While seeking partition of the property with the defendant, the appellant/plaintiff sought partition of 10 decimals of land out of $16\frac{1}{2}$ decimals of land.

8. In the conveyance between Ayub Ali Mondal and the defendant no.1, Reziya Khatoon, it has been stated by Ayub Ali Mondal that the State had acquired $7\frac{1}{2}$ decimals of land out of $14\frac{1}{2}$ decimals of land. This appears to be incorrect as Exhibit-X before the Trial Court has clearly recorded that $4\frac{1}{2}$ decimals of land out of $14\frac{1}{2}$ decimals of land in plot in question had vested in the State.

9. The Trial Court without a formal finding that the appellant/plaintiff has incorrectly sought partition of $16\frac{1}{2}$ decimals of land instead of 14 decimals of land, went on to ultimately pronounce that the plaintiff should be entitled to $7\frac{1}{2}$ decimals of land and the defendant would be entitled to 2 decimals of land.

10. The Trial Court further committed errors in not conducting the suit *ex parte* against the State since they neither appeared nor contested the suit. The Land Acquisition Records in respect of L.A. II/19/1 of 1970-71 clearly indicate that 0.045 decimals of land have vested in the State.

11. There is yet another issue which the Trial Court had failed to clarify. Momena Bibi is stated to have executed a Hebanama in respect of 10 decimals of land in favour of the plaintiff whereas the same ought to have been 9.5 decimals of land. Ultimately the decree passed by the Trial Court, however, restricts the right of the appellant/plaintiff to 7½ decimals of land and the defendant to two decimals of land. The Lower Appellate Court was, therefore, not wholly unjustified in remanding the matter back to the Trial Court for a proper and clear finding of the incorrectness of the extent acquired by the State and the erroneous convenient in the conveyance between Ayub Ali Mondal and the defendant in Exhibit-“A”. The appellant also ought to have amended his plaint seeking partition of only 14.5 decimals of land of which 4.5 decimals of land had vested in the State.

12. This Court would have normally accepted the findings of the Lower Appellate Court and remand the suit back to the Trial Court. However, since the documents and errors are clarified by reason of the

extract from the L.A. Case Records being Exhibit-X before the Trial Court, this Court holds as follows:

- (a) The plaintiff in the plaint could at best claim partition of 14 decimals of land and not 16 and 1/2 decimals of land;
- (b) There is an incorrect recording in the conveyance between Ayub Ali Mondal and the defendant no.1 that the State has acquired 7 decimals of land whereas the acquisition proceedings indicate acquisition of 4 ½ decimals of land;
- (c) The partition shall be deemed to have been claimed by the plaintiff only for 14 decimals of land of which 4.5 decimals of land shall be deemed to have been vested in the State. Out of the remaining 9.5 decimals of land, the defendant would be entitled to two decimals of land and the appellant/plaintiff would be entitled to 7 ½ decimals of land;
- (d) The parties may proceed to amicably partition the suit plot as directed by the Trial Judge within a period of 60 days from date. Upon failure of amicable partition, the parties may apply before the Court below for a final decree. The decree dated 23rd July, 2004 pronounced by the Trial Judge shall be deemed as a preliminary decree;
- (e) The parties may apply for final decree and execution thereof upon failure of amicable partition between themselves.

13. This Court has only clarified as above to enable the parties to avoid further prolonged litigation. The impugned judgment of the Lower Court is, thus, modified accordingly.

14. F.M.A. 1345 of 2011 is allowed and disposed of.

15. In view of disposal of the appeal itself, the connected application being CAN 1 of 2025 is also disposed of.

16. There will be no order as to costs.

17. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)