

29.01.2025
Ct. no.3.
Sl. No.1.
S/L.
Mithun

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Appellate Side**

C.O. 10 of 2025

**Jayanta Chakraborty
versus
Sukanta Chakraborty & Ors.**

Mr. Ajoy Kumar Singhanian,
Ms. Madhurima Roy

... for the petitioner

This civil revision has been filed by the petitioner-plaintiff under Article 227 of the Constitution of India challenging order no. 27 dated 30th November, 2024 passed by the learned Civil Judge (Senior Division) at Jalpaiguri in Partition Suit No. 130 of 2020.

The instant civil revision was heard on 24th January, 2025. However, for further clarification the matter is posted under the heading '*To be Mentioned*' in the supplementary list.

The brief fact of the case is that the plaintiff filed a suit for partition, separate possession and other consequential relief being Title Suit (partition) No. 130 of 2020 before the learned Civil Judge (Senior Division), at Jalpaiguri in respect of the joint property comprised within L.R. Plot No. 182, Mouza- Dabgram, measuring more or less 3.700 Decimals within holding no. 155/2 ward no. 31 of SMC. On 24th January, 2023 the said

suit was decreed *ex parte* in preliminary form. On 26th June, 2023, learned Commissioner was appointed to partition the suit property in terms of the preliminary decree. Thereafter on 24th August, 2023, the learned Commissioner filed his report. On 18th September, 2023 the Commissioner's report was accepted and *Sheristadar* was directed to assess the stamp duty to draw up the final decree. By order no. 24 dated 29th July, 2024, the parties were directed to file stamp duty of Rs.2,45,301/-, upon considering the report of the *Sheristadar*. The petitioner-plaintiff filed an application under Section 151 of the Code of Civil Procedure, praying for recalling of the order dated 29th July, 2024 and/or modification of the same to the extent that the plaintiff be directed to deposit the highest court-fees of Rs.50,000/- in view of the provisions of West Bengal Courts Fees Act. The said application was rejected by the learned Trial Court by order dated 30th November, 2024. Being aggrieved by and dissatisfied with the impugned order, the petitioner-plaintiff has preferred the present revision.

Mr. Ajoy Kumar Singhanian, learned advocate appearing for the plaintiff-petitioner submits that the learned Trial Court has assessed the stamp duty which is equivalent to sale transaction and, thus, is not acceptable. The value of the property as per the report of Additional District Sub-Registrar, Bhaktinagar,

Jalpaiguri is Rs. 40,88,347/-. As per the West Bengal Court Fees Act, Schedule-I, the maximum court fees payable is Rs.50,000/-. Therefore, the direction of learned Trial Court for payment of Rs.2,45,301/- towards stamp duty is not sustainable. He seeks for setting aside of the impugned order and a direction for payment of *ad valorem* Court Fees of Rs.50,000/- which is the maximum as provided under Schedule-I of the West Bengal Court Fees Act.

By order no. 12 dated 24th January, 2023 decree was passed *ex parte* in preliminary form. Thereafter, by an order No. 14 dated 21st June, 2023 learned Commissioner was appointed for partition of the suit property in terms of the preliminary decree. The learned Commissioner submitted report which was accepted by learned Trial Court on 18th September, 2023. Thereafter, the order was passed by the learned Trial Court for determining the market-value of the suit property to assess the stamp duty payable by the petitioner-plaintiff. The learned Trial Court assessed the stamp duty to be paid by the petitioner-plaintiff to be Rs.2,45,301/- as per of the report submitted by the *Sheristader* on the basis of the report of the Additional Sub-Registrar, Bhaktinagar, Jalpaiguri.

On going through the Annexure-E at page 30 of the instant petition, it is found that the market-value of the suit property is assessed at Rs.40,88,347/- and the

stamp duty assessed of Rs.2,45,301/- is payable in case of transaction relating to sale. The learned Trial Court has proceeded to determine the stamp duty payable by the petitioner-plaintiff for drawing up final decree in the partition suit on the basis of the said document. Be that as it may, upon going through the impugned order under challenge, it is found that the learned Trial Court while rejecting the application of the petitioner-plaintiff under Section 151 of the Civil Procedure Code, has observed that Schedule 1A of the Indian Stamp Act and the rate of stamp duty contained therein in case of a partition suit is applicable in the matter.

Accordingly, the instant civil revision being **C.O 10 of 2025** is disposed of directing the learned Trial Court to re-assess the stamp duty payable by the plaintiff-petitioner for drawing up the final decree in terms of Schedule 1A of the Indian Stamp Act applicable to partition suit. The order no.24 dated 29th July, 2024 of the learned trial Court is hereby set aside.

All connected applications, if any, stand disposed of.

There will be, however, no order as to costs.

Interim order, if any, stands vacated.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary formalities.

(Bivas Pattanayak, J.)