

JPD-05
Ct No.01
21.07.2025
AK

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

SAT 11 of 2025

Dipankar Roy and another
Vs
Manik Roy

Mr. Subhankar Dutta
Ms. Swagata Mitra

.... for the appellants.

- 1.** The defect as pointed out by the Stamp Reporter is that the certified copy of the trial court's decree was not furnished with the Memorandum.
- 2.** Such certified copy is filed in court today and be kept on record. The same is accepted and the defect be deemed to stand cured. The Stamp Reporter shall furnish a revised report in that regard.
- 3.** The appeal is taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.
- 4.** The present appeal has been preferred against a judgment of affirmance.
- 5.** The plaintiffs are the appellants before this court.
- 6.** The matter arises out of a suit for declaration of title and eviction filed by the plaintiffs/appellants against the defendant/respondent.
- 7.** Learned counsel for the appellants argues that the brother of the plaintiffs, being one of the co-sharers

of the property who also inherited a share in the property from their common predecessor-in-interest, sold out a demarcated portion of the suit property to the defendant/respondent.

- 8.** As such, since the defendant/respondent was encroaching upon the portion of the property which belongs to the plaintiffs, the present suit for declaration of title and eviction was filed.
- 9.** Both the courts below proceeded on the premise that in the absence of a formal partition by metes and bounds, all the co-sharers have right over every inch of the property and, as such, some of the co-sharers cannot get an eviction decree against the other co-sharer.
- 10.** We find from a perusal of the judgments and decrees of the courts below that the courts below were justified in so holding.
- 11.** In the absence of partition by metes and bounds, either by way of a registered partition deed or a partition decree passed by a competent civil court, we cannot come to the conclusion that the plaintiffs have exclusive ownership rights and/or possession in respect of any particular portion of the property.
- 12.** The effect of the transfer by the other co-sharer of the plaintiffs to the defendant, even if the sale deed mentions a demarcated portion, would merely be that the share of the said vendor was transferred to

the defendant, thereby making the defendant/respondent another co-sharer in the property.

- 13.** Thus, the legal possession of one of the co-sharers tantamounts to the possession of the other co-sharers as well and some of the co-sharers cannot get an eviction decree on the premise that the other co-sharer (here, the defendant/respondent) is a licensee or trespasser.
- 14.** Accordingly, we do not find any substantial question of law involved in the appeal.
- 15.** Rather, the concurrent findings of the courts below were justified in law and on facts.
- 16.** Accordingly, SAT 11 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
- 17.** It is made clear that nothing in the above order shall preclude the plaintiffs/appellants from preferring an appropriate suit for partition and/or otherwise, if otherwise entitled, in accordance with law.
- 18.** There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)