

D/L.3.
January 19, 2026.
MNS.

SA No. 89 of 2025

Pravakar Goswami and others
Vs.
Ramkrishna Goswami and others

Mr. Saurabh Guha Thakurta,
Ms. Ipsita Ghosh

... for the appellants.

1. The present Second Appeal has been preferred against a judgment of affirmance, whereby both the courts below dismissed the suit filed by the plaintiffs/appellants for eviction of the defendants/respondents, who are purchasers from other co-owners of the property, under Section 44 of the Transfer of Property Act, 1882 (in short, “the 1882 Act”).

2. Learned counsel appearing for the appellants submits that from the Commissioner’s report produced in the trial court it is evident that there is only a common boundary wall between the respective portions of the dwelling house in possession of the plaintiffs and the defendants and that in view of no formal partition having ever been effected, the rigours of Section 44 of the 1882 Act apply.

3. However, we find that there is a concurrent finding of fact by both the courts below that by virtue of the common boundary wall it was established that the

plaintiffs and the defendants reside in their separate portions of the said dwelling house.

4. As such, even if there was no formal partition between the parties, fact remains that different identifiable portions of the house-in-question are separately in occupation of the plaintiffs and the defendants respectively, insofar as their respective occupied portions are distinct and different. Therefore, the suit property cannot be classified as a “dwelling house belonging to an undivided family” of the co-owners.

5. That apart, the proviso to Section 44 of the 1882 Act provides that where the transferee of share of a dwelling house belonging to an undivided family is not a member of the family, nothing in the said Section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

6. Therefore, there is little or no scope of eviction of a subsequent purchaser from a co-sharer in the event the said subsequent purchaser has already been handed over possession of a specific portion of the property within the limited contemplation of the proviso to Section 44 of the 1882 Act.

7. Although the said Section does not by itself confer any right of possession as per its proviso, in the event possession is already taken, through the title claimed by virtue of transfer by certain co-sharers, it cannot be said that by application of the said proviso to Section 44 of

the 1882 Act simpliciter a decree of eviction can be obtained.

8. That apart, in view of the concurrent findings referred to above, this Court is of the opinion that no substantial question of law is raised in the Second Appeal.

9. Accordingly, SA No. 89 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

10. There will be no order as to costs.

(Supratim Bhattacharya, J.) (Sabyasachi Bhattacharyya, J.)