

08.05.2026.
Item No. 7.
Court No. 13
ap

F.A. No. 144 of 2012
With
I.A. No. CAN/2/2017 (Old CAN 9113 of 2017)
And
I.A. No. CAN/3/2018 (Old CAN 3016 of 2018)

Nilanjan Roy & Ors.
Versus
Lokesh Ranjan Roy
(Sri Shibnath Roy, since deceased) & Anr.

Mr. Probal Kumar Mukherjee, Ld. Sr. Advocate,
Mr. Swarnava Ray,
Mr. Biswajit Chowdhury.

...For the appellants.

Mr. Gour Baran Sau.

..For the respondent no.1(a).

1. Affidavit-of-service filed in Court today be taken on record. It appears from that the service has duly been effected on the respondent no.1(b).

2. The respondent no.1(a) is represented. Vakalatnama filed by the learned Advocate-on-record for the respondent no.1(a) Mr. Gour Baran Sau is taken on record.

3. CIS of this Court may be appropriately corrected regarding the name of Mr. Gour Baran Sau as the learned Advocate-on-record for the respondent no.1(a).

4. A short question that comes for consideration in the instant appeal is whether the final decree dated 20th November, 2010 by the learned Civil Judge (Senior Division), Malda in Partition Suit No. 46 of 1992 is in accordance with the preliminary decree dated 14th May, 1997.

5. Admittedly, a Commissioner of Partition was appointed after the preliminary decree was passed. The report of the Commissioner of Partition was objected to in writing filed before the Court below.

6. The appellants, however, did not call upon the Commissioner of Partition to be examined and cross-examined.

7. While it could have been held that the appellants by reason of not asking for the Commissioner to be cross-examined, had waived such right, it is equally true that a final decree must be in compliance with and in terms of the preliminary decree dated 14th May, 1997.

8. Learned Counsel for the respondent no.1(a), however, objects by submitting that the execution of the decree has been completed and vacant possession in terms of the final decree of the shares and demarcated property have been delivered to the parties concerned.

9. This Court is of the view that under Section 144 of the Code of Civil Procedure, 1908, any wrong committed post execution of a decree can be restored and reinstituted by the Court seized of any proceedings in connection with or arising from such decree as executed.

10. Having regard, however, to the fact that the execution was completed and satisfaction recorded in the year 2018, the parties may remain in possession of

their respective portions of the property and a status quo as on date be maintained by the parties.

11. The final decree dated 20th November, 2010 passed by the Court below shall stand set aside.

12. The Commissioner of Partition shall be brought as a witness to formally prove his report. All parties to the suit shall be entitled to examine and cross-examine the Commissioner after his report is taken on record.

13. The appellants shall be entitled to rely upon the objection to the Commissioner's report already on record. The respondents shall be entitled to file a rejoinder to such objection within a period of four weeks from the date of receipt of the appellants' objection to such Commissioner's report. The appellants shall furnish a copy of the objection to the learned Advocate for the respondent no.1(a) forthwith.

14. The parties shall be heard and the Trial Judge shall thereupon pronounce as to whether the report of the Commissioner dividing the respective shares of the suit properties is in terms of the preliminary decree dated 14th May, 1997.

15. All the orders passed in P. Ex. Case No. 17 of 2010 by the learned Civil Judge (Senior Division), 1st Court, Malda and the order of status quo shall be subject to and abide by the final decree that may be passed afresh by the Trial Court, as directed hereinabove.

16. Let TCR be returned to the Court below urgently by the Special Messenger's costs that shall be put in by the appellants by 13th May, 2026.

17. With the aforesaid observations, F.A. 144 of 2012 is disposed of.

18. In view of disposal of the appeal itself, all the pending connected applications are disposed of.

19. There will be no order as to costs.

20. 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.)

(Rai Chattopadhyay, J.)