

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

FA No. 142 of 2022

Sri Sasanka Sekhar Moyra
Vs.
Sri Sanjoy Moyra

For the appellant : Mr. Sounak Bhattacharya,
Mr. Sounak Mandal,
Mr. Abhirup Halder,
Ms. Bipasha Bhattacharyya, Advs.

For the respondent : Mr. Sandip Das,
Mr. Dipankar Bhandari, Advs.

Heard on : July 1, 2026.

Judgment on : July 1, 2026.

Sabyasachi Bhattacharyya, J.:

1. The present appeal has been preferred against a preliminary decree of partition.
2. The learned Trial Judge declared 50% share of each of the parties in the suit property.

3. Although the title of the parties was not disputed, the defendant/appellant sought to make out a case in the Trial Court that there was an oral partition between the parties previously.
4. Learned counsel for the appellant submits that the learned Trial Judge erred in law in placing reliance on Section 14 of the West Bengal Land Reforms Act, 1955 to come to the conclusion that without any partition by metes and bounds, either by a decree of court or by a registered deed, there cannot be any partition, in view of the said Act being amended in the year 2000, giving retrospective effect from August 7, 1969, insofar as the amended Section 14 thereof is concerned. Since the case of the defendant/appellant is that the suit property was partitioned mutually in the year 1964, that is, prior to coming into force of the amended Section 14, the rigours of the same would not apply as at that juncture, a valid partition was possible in law even without any decree of court and/or registered deed.
5. Learned counsel further submits that the oral partition between the parties was sufficiently proved by oral evidence and, as

such, the learned Trial Judge erred in law and in fact in disbelieving such case.

6. Learned counsel for the respondent submits that even without relying on Section 14 of the 1955 Act, the alleged oral partition between the parties was not proved by the defendant's witnesses. Learned counsel draws the attention of the Court to the findings of the learned Trial Judge to that effect.
7. As per the impugned judgment, the DW1 adduced contradictory evidence, which was discussed by the learned Trial Judge before coming to the conclusion that the said witness had failed to prove the defence case.
8. Insofar as DW2 is concerned, the learned Trial Judge also recorded the contradictions in his evidence and disbelieved the case of oral partition.
9. It is, thus, submitted that prior oral partition could not be proved by oral evidence between the parties.
10. Upon hearing learned counsel for the parties, we find substance in the contention of the appellant that since the defence case is that the mutual partition was effected in the year 1964 before coming into force of the substituted Section

14 of the 1955 Act retrospectively, the rigours of the said provision would not apply in the instant case.

11. However, even independently of such provision, we do not find that the defendant's witnesses were able to prove their case of prior partition by oral evidence.
12. Insofar as the DW1 is concerned, as reflected in his cross-examination, the veracity of the said witness's evidence is in serious doubt. For example, although DW1 mentioned the amicable partition to have taken place on 1st Baisakh, 1371 B.S., he stated that he did not know the date of his marriage, while on the other hand alleging that his marriage took place earlier than the partition. In the immediately next sentence, DW1 stated that the partition took place prior to his marriage, thereby contradicting his earlier statement.
13. From the cross-examination of the DW1, we find that not only was he unsure about the purported date of oral partition, he could not even recollect the date of birth of his three children, the date of his marriage or the date of death of his father. He could not also remember the date of birth of his grand children.

14. Even otherwise, the cross-examination of the DW1 entirely demolishes the credibility of the said witness and his trustworthiness.
15. DW2, admittedly a neighbour, iterated in his examination-in-chief about the oral partition.
16. However, he also admitted that he could not remember the date of birth of his son, thereby casting doubt on his memory.
17. More crucially, DW2 admitted in his cross-examination that he knew only about the partition of the land between himself and his brother and knew nothing else about others, thereby negating the statements made in his examination-in-chief about the purported oral partition between the parties.
18. DW3 was only a Commissioner appointed in connection with the suit and, as such, his evidence does not come to the aid of the defence case.
19. Hence, we do not find any iota of evidence, either oral or documentary, to establish the defence case that there was a prior mutual partition between the parties. Since the moiety shares of the parties is otherwise admitted, the learned Trial Judge was justified in passing the preliminary decree, thereby

declaring 50% share of each of the parties and directing a final decree to be drawn up in accordance with law.

20. Hence, there is no scope of interference in the appeal.

21. FA 142 of 2022 is accordingly dismissed on contest, thereby affirming the impugned judgment and preliminary partition decree dated April 11, 2022 passed by the learned Civil Judge (Senior Division) at Diamond Harbour, District – South 24 Parganas in Title Suit No. 310 of 2017.

22. Interim order, if any, stands vacated.

23. A formal decree be drawn up accordingly.

24. The trial court records be sent down at the earliest by special messenger at the cost of the respondent.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)

AD-13
Ct No.16
01.07.2026
(SSS)