

In the High Court At Calcutta
CIVIL APPELLATE JURISDICTION
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Chaitali Chatterjee (Das)

FAT/18/2024

SMT. SUCHANDRA GHOSH
VS
SMT. SUPRIYA PAUL

For the Appellant :Mr. Bijay Bikram Das, Advocate
Mr. Deborshi Dhar, Advocate

Heard & Judgment on: January 8, 2026

Debangsu Basak, J.

1. Appeal is at the behest of a defendant in Title Suit No. 19 of 2021.
2. By the impugned judgment and order, learned trial Judge passed a preliminary decree in a suit for partition. Learned trial Judge, by the impugned judgment and decree declared that the parties to the suit are entitled to 50% share in the suit property.
3. Co-ordinate Bench referred the parties to mediation. Learned mediator submitted a report stating that the mediation failed.
4. Learned advocate appearing for the appellant submits that, the parties to the suit purchased an immovable property by a registered deed of conveyance. There was an oral agreement between the

parties to the suit that the defendant should be entitled to the entirety of the suit property.

5. Learned advocate appearing for the appellant submits that, due to the fault of the learned advocate for the appellant, the appellant could not adduce evidence on the date fixed. In this regard, he draws the attention of the Court to Order No. 21 dated October 13, 2023. He submits that on such date, the learned advocate appearing for the appellant did not appear due to a wrong entry in the diary.
6. Learned advocate appearing for the appellant draws the attention of the Court to Order No. 22, dated October 17, 2023. He submits that the application for recall of the order dated October 13, 2023 was rejected.
7. In response to a query of the Court learned advocate appearing for the appellant submits that, the appellant did not assail the order dated October 17, 2023.
8. None appears for the respondent.
9. We find from the records that a suit for partition and permanent injunction along with other consequential reliefs was decreed in preliminary form by the impugned judgment and an order passed by the learned trial Judge. Learned trial Judge declared the possession, right, title and interests in the suit land to the extent of 50% share each. Learned trial Judge also directed the suit property to be partitioned by metes and bounds in accordance with the respective shares as declared.
10. We find from the records that the appellant was contesting the suit. Evidence of the plaintiff in the suit was closed on September 26, 2023. Next date fixed by the learned trial Judge was on October 10, 2023 for recording the evidence of the appellant as the

defendant. On October 10, 2023, appellant filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 along with a petition for shifting the date from the peremptory board. Such application under Order VI Rule 17 of the Code of Civil Procedure, 1908 seeking to amend the written statement was allowed on context.

11. Amended written statement of the appellant/defendant was taken on record. Learned trial Judge fixed October 13, 2023 for the appellant to adduce evidence. On October 13, 2023, the appellant did not appear. Consequently, learned trial Judge closed the evidence of the appellant and fixed October 17, 2023 for argument.
12. On October 17, 2023, the appellant appeared in the suit and filed an application under Section 151 of the Code of Civil Procedure, 1908 praying for recall of the order dated October 13, 2023. Such application was rejected.
13. Appellant did not assail the order dated October 17, 2023.
14. Learned trial Judge fixed October 18, 2023 for argument. On October 18, 2023, the appellant was represented and advanced argument. Respondent was also heard by the learned trial Judge.
15. Consequently, by the impugned judgment and order dated November 28, 2023, learned trial Judge was pleased to pass preliminary decree declaring the share amongst the parties and directing partition of the immovable properties by metes and bounds.
16. So far as the impugned judgment and order is concerned, we do not find any material ground to interfere. In fact, no material ground is canvassed before us apart from the fact that an opportunity to adduce evidence by the defendant should be granted.

17. We find from the records that, the appellant was afforded adequate opportunity to adduce evidence. Appellant did not avail of such opportunity. Appellant did not assail the order dated October 17, 2023 which rejected the application of the appellant for recalling the order dated October 13, 2023.
18. Moreover, appellant participated in the proceedings. Subsequent to the closure of evidence appellant canvassed his arguments on the merits of the matter.
19. There exists a registered title deed in respect of the immovable property concerned. The parties to the suit are the two purchasers of the immovable property concerned. The shares, therefore, of the parties to the suit in respect of the immovable property concerned were rightly declared by the impugned judgment and order to be 50% each. The learned trial Judge rightly directed partition of the immovable property concerned by metes and bounds.
20. In such circumstances, we find no ground in the present appeal.
21. FAT/18/2024 is accordingly **dismissed** without any order as to costs.

[Debangsu Basak, J.]

22. I agree

[Chaitali Chatterjee (Das), J.]