

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

BEFORE:

THE HON'BLE JUSTICE OM NARAYAN RAI

WPO 506 OF 2025

SUBRATA NUNDY

VS.

**THE COLLECTOR OF KOLKATA, STAMP AND REVENUE, OFFICE OF
THE COLLECTOR & ORS.**

For the Petitioner : Mr. Sanjib Dawn, Adv.

For the State : Mr. Ayan Banerjee, Adv.
Mr. Soumyajit Ghosh, Adv.

Hearing Concluded on : 19.01.2026

Judgment on : 18.02.2026

Om Narayan Rai, J.:-

1. This writ petition has been filed seeking issuance of a Writ of Mandamus declaring that the final decree dated November 29, 2023 is not an "*instrument of partition*" within the meaning of Section 2(15) of the Indian Stamp Act, 1899 (hereafter "the said Act of 1899") and therefore not exigible to stamp duty under Article 45 or Article 23 of Schedule 1A of the said Act of 1899.

FACTS OF THE CASE:

2. Briefly summed up, the facts of the case are as follows:-
 - a) A suit for partition being C.S. No. 91 of 2013 had been instituted on the Original Side of this Court by one Smt. Sudha Nundy and her son Sri Suprakash Nundy wherein the petitioner was also arrayed as a defendant

along with others. In the said suit, a preliminary decree was passed on December 03, 2013.

- b)** The preliminary decree was thereafter modified on January 20, 2016 and the petitioner was declared to be the owner of 12.5% of the 3/4th share of the suit property. A Commissioner was appointed for preparation of the plan for partition who duly prepared a plan for partition.
- c)** On June 06, 2018 a structural engineer was appointed to assess the condition of the property inasmuch as the same was dilapidated. The structural engineer filed a report indicating that as per the plan, physical partition was not feasible.
- d)** Subsequently, the original plaintiffs died and the legal heirs of the original plaintiffs were substituted.
- e)** An application was thereafter filed by the plaintiffs (substituted), praying for sale of the suit property by public auction so that the parties were not deprived of their legitimate shares and claim in respect of the property.
- f)** Upon such application being filed, the petitioner (i.e. the defendant no.3 in the suit) sought for leave of the Court to allow him to purchase the share of the plaintiffs at the prevalent market price.
- g)** On February 20, 2023, it was agreed between the parties that the plaintiffs' share would be sold to the petitioner. Ultimately on August 05, 2023 a registered conveyance was executed by the plaintiffs in favour of the petitioner upon payment of stamp duty.
- h)** On November 29, 2023 a coordinate Bench of this Court ultimately disposed of the suit being C.S. No.91 of 2013 and directed drawing up of decree "by making the proposed plan for partition being Annexure L of the

Commissioner's report and the Deed of Conveyance dated 5th August, 2023 as part of the Decree".

- i)** While passing the said decree, the Court took note of the report filed by the structural engineer indicating that as the subject premises could not bear the impact of fresh construction to effect partition as per plan therefore partition of the premises was not possible.
- j)** The decree confirmed that the petitioner's total share is 37.5%. The decree department thereafter sent the draft decree to the Collector for the purpose of assessment of stamp duty. On March 13, 2025 the Collector imposed a stamp duty of Rs.2,61,000/- which comprised two components:-
 - i.** Rs.45,000/- under Article 45 of Schedule 1A of the said Act of 1899 for partition and
 - ii.** Rs.2,16,000/- under Article 23 of Schedule 1A of the said Act of 1899 for sale.
- k)** The petitioner objected to the same highlighting that stamp duty under Article 23 of Schedule 1A of the said Act of 1899 for the purpose of conveyance had already been paid during registration of sale deed on August 05, 2023. The Collector rejected such objection and passed an order dated April 08, 2025. Being aggrieved by the said order dated April 08, 2025, the petitioner approached this Court by way of this present writ petition.
- l)** Subsequently, by an order dated July 16, 2025, the Collector of Kolkata, Stamp and Revenue deleted the imposition of stamp duty for the purpose of conveyance (to the tune of Rs.1,43,520/-) but retained the imposition of

stamp duty to the tune of Rs.45,000/- for the purpose of partition. The said fact was brought on record by way of a supplementary affidavit filed in Court. The petitioner still remains aggrieved by the imposition of stamp duty for the purpose of partition.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Mr. Dawn, learned Advocate appearing for the petitioner submits that in terms of Section 2(15) of the said Act of 1899, a final order for “*effecting a partition*” passed by a Civil Court is exigible to stamp duty but in the instant case since partition has been held not to be physically possible, stamp duty could not be levied.
4. It was submitted that a decree which actually effects partition is treated to be dutiable and not a decree whereby physical partition by meets and bounds has been held to be not possible. It was submitted that as partition could not be effected physically, and there was no direction for effecting partition in the final decree, there was no “*final order for effecting partition*” passed by any Civil Court and that being so the decree could not be treated as an instrument of partition.
5. It was submitted that in such view of the matter, it should be held that the respondent State authorities are not authorised to claim any stamp duty.
6. It was further submitted that no new right had been created or fresh partition had been effected therefore no stamp duty was chargeable.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

7. Mr. Banerjee, learned Advocate appearing for the respondent took this Court through Section 3 of the said Act of 1899 to demonstrate the instruments that are chargeable to duty. He then placed Section 2(15) of the said Act of

1899 and Article 45 of Schedule 1A of the said Act of 1899 to show that the decree by which partition had been effected in the present case was exigible to stamp duty.

8. Relying on a judgment of the Hon'ble Supreme Court in the case of ***Subh Karan Bubna vs. Sita Saran Bubna & Others***¹, it was submitted by Mr. Banerjee that once a final decree was passed, it became irrelevant as to whether physical partition could be done or not.
9. He next relied on a judgment of the Hon'ble Supreme Court in the case of ***Bimal Kumar & Another vs. Shakuntala Debi & Others***² and submitted that a decree for partition takes the character of a joint decree.
10. Mr. Banerjee submitted that a final decree ultimately declaring the shares of the parties would mean declaring them by metes and bounds and in the case at hand when the report of the Commissioner had been made part of the decree, there was no reason to hold that the same was not qualified to be charged with stamp duty.

ANALYSIS & DECISION:

11. Heard Learned Advocates appearing for the respective parties and considered the material on record.
12. The only point which needs to be decided by this Court is whether the demand of stamp duty by the Collector is justified in the case at hand or not.
13. Section 2(15) of the said Act of 1899 is relevant for the present purpose. The same reads thus:-

¹ (2009) 9 SCC 689

² (2012) 3 SCC 548

“(15) Instrument of partition— “instrument of partition” means any instrument where by co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority or any Civil Court and an award by an arbitrator directing a partition;”

- 14.** A meaningful reading of the aforequoted provision would reveal that a “*final order for effecting a partition*” passed by a civil court would qualify for an instrument of partition. Since the question that has fallen for consideration by this Court pertains to the exigibility of the final decree to stamp duty, therefore this Court would look at the final decree only with the intent of deciphering as to whether the same satisfies the requirement of a “*final order for effecting a partition*”.
- 15.** Before proceeding further a brief survey of the relevant provisions of the Code of Civil Procedure, 1908 (hereafter “the Code”) would be necessary for the purpose of arriving at a just conclusion.
- 16.** Order XX Rule 18 of the Code prescribes the procedure for Decree in suit for partition of property or separate possession of a share therein. The same reads thus:-

“18. Decree in suit for partition of property or separate possession of a share therein— Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the

several parties interested in the property and giving such further directions as may be required.”

- 17.** As to the manner in which the inquiry indicated in Order XX Rule 18(2) of the Code is to be done is provided in Order XXVI Rules 13 and 14 of the Code. The same may now be noticed:-

“13. Commission to make partition of immovable property - Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

14. Procedure of Commissioner -

(1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directly by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.”

- 18.** In the case at hand, the Court has conducted the relevant inquiry and the report with partition plan filed by the Commissioner has been accepted by the parties which has been made part of the decree. Ordinarily, in partition matters, if property is physically impartible for any reason, the Court takes the route of sale or equalisation of shares by payment of owelty money etc. However nothing of that sort appears to have been done in the case at hand

and the parties have also accepted the situation. In such view of the matter, can the petitioner (or for that matter any of the parties to the proceeding) contend that the decree is not final? The answer in the considered view of the court must be in the negative.

19. After having accepted the partition plan and the final decree whereby the suit was disposed of, the petitioner cannot now turn around and say that the petitioner is not liable to pay any stamp duty as the decree is not qualified to be called a “*final order for effecting partition*”.
20. At this juncture, the observations of the Hon’ble Supreme Court in the case of **Shankar Balwant Lokhande vs. Chandrakant Shankar Lokhande & Another³** may be noticed:-

“3. Order 20, Rule 7 of CPC envisages that the decree “shall bear the day on which the judgment was pronounced, and, when the judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree”. Section 2(2) of CPC defines ‘decree’ to mean “the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final”. A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then, as a result of the further inquiries conducted pursuant to the preliminary decree, the rights of the parties are fully determined and a decree is passed in accordance with such determination which is final. Both the decrees are in the same suit. Final decree may be said to become final in two ways: (i) when the time for appeal has expired without any appeal being filed against the preliminary decree or the matter has been decided by the highest Court; (ii) when, as regards the court passing the decree, the same stands completely disposed of. It is in the latter sense the word ‘decree’ is used in Section 2(2) of CPC. The appealability of the decree will, therefore, not affect its character as a final decree. The final decree merely carries into fulfilment the preliminary decree.”

[Emphasis supplied]

³ (1995) 3 SCC 413

- 21.** In the case at hand both the aforesaid conditions stand fulfilled. As already indicated hereinabove, the partition suit being C.S.91 of 2013 was disposed of by a coordinate Bench of this Court on November 29, 2023 *inter alia* with a direction to draw up the decree “by making the proposed plan for partition being Annexure L of the Commissioner’s report and the Deed of Conveyance dated 5th August, 2023 as part of the Decree”. The parties to the suit have accepted the decree as it is without taking any recourse thereagainst. It is worth noticing that upon the structural engineer filing his report observing that the subject property would not be able to withstand the impact of construction for the purpose of effecting partition as per plan, an application was made by the plaintiffs seeking auction of the subject property for the benefit of all the parties. However, the petitioner purchased the shares of the plaintiffs and stopped at that. The plaintiffs having sold off their shares obviously exited from the litigation. None of the defendants in the partition suit who remained on board made any application for sale in terms of Section 2 of the Partition Act, 1893 before passing of the final decree despite it being known to them that the property was not physically partible. The final decree was allowed to be passed upon making the plan for partition a part of the decree and the decree has also been allowed to attain finality.
- 22.** In the aforesaid context the following observations of the Hon’ble Supreme Court in the case of ***Subh Karan Bubna*** (supra) deserve notice:-

“18. The following principles emerge from the above discussion regarding partition suits:

18.2. *In regard to immovable properties (other than agricultural lands paying land revenue), that is, buildings, plots, etc. or movable properties:*

(i) where the court can conveniently and without further enquiry make the division without the assistance of any Commissioner, or where parties agree upon the manner of division, the court will pass a single decree comprising the preliminary decree declaring the rights of several parties and also a final decree dividing the suit properties by metes and bounds.

(ii) where the division by metes and bounds cannot be made without further inquiry, the court will pass a preliminary decree declaring the rights of the parties interested in the property and give further directions as may be required to effect the division. In such cases, normally a Commissioner is appointed (usually an engineer, draughtsman, architect, or lawyer) to physically examine the property to be divided and suggest the manner of division. The court then hears the parties on the report, and passes a final decree for division by metes and bounds.

The function of making a partition or separation according to the rights declared by the preliminary decree (in regard to non-agricultural immovable properties and movables) is entrusted to a Commissioner, as it involves inspection of the property and examination of various alternatives with reference to practical utility and site conditions. When the Commissioner gives his report as to the manner of division, the proposals contained in the report are considered by the court; and after hearing objections to the report, if any, the court passes a final decree whereby the relief sought in the suit is granted by separating the property by metes and bounds. It is also possible that if the property is incapable of proper division, the court may direct sale thereof and distribution of the proceeds as per the shares declared.

18.3. *As the declaration of rights or shares is only the first stage in a suit for partition, a preliminary decree does not have the effect of disposing of the suit. The suit continues to be pending until partition, that is, division by metes and bounds takes place by passing a final decree. An application requesting the court to take necessary steps to draw up a final decree effecting a division in terms of the preliminary decree, is neither an application for execution (falling under Article 136 of the Limitation Act) nor an application seeking a fresh relief (falling under Article 137 of the Limitation Act). It is only a reminder to the court to do its duty to appoint a Commissioner, get a report, and draw a final decree in the pending suit so that the suit is taken to its logical conclusion.”*

23. In the instant case final decree has been drawn up by making the partition plan a part of the decree. The parties have accepted the same. While it is

true that in the instant case the Court has not directed sale of the property and distribution of the proceeds as per the shares of the parties, it is equally true that the parties have accepted such arrangement. In such context the observations of the following observations of the Hon'ble Supreme Court in the case of ***Rachakonda Venkat Rao & Others vs. R. Satya Bai***⁴ may be noticed:-

“19. The learned counsel for the respondents (plaintiffs) argued that the 1978 decree was partly preliminary and partly final. In support of this argument he drew our attention to the application of the plaintiffs under Order 26 Rules 13 and 14 CPC where it is stated that in the decree dated 13-7-1978, separate possession of properties at Serial Nos. 1, 2, 3 and 5 of Schedule I had been allotted to the plaintiffs while properties at Serial Nos. 4, 6 and 7 of the said schedule remained joint. From this the learned counsel submits that so far as properties at Sl. Nos. 1, 2, 3 and 5 of Schedule I are concerned, the decree was a final decree while for the rest of the properties it was only a preliminary decree. It is further submitted by the learned counsel for the plaintiffs that in the plaint they had asked for separate possession of all the properties falling to their share. Accordingly, a final decree with respect to the joint properties remained to be passed. Referring to sub-section (2) of Section 2 of the Code of Civil Procedure it was argued that a suit has to be completely disposed of by a final decree. In the decree dated 13-7-1978, properties were allotted to the plaintiffs as per Schedule I. The said schedule shows that certain properties were exclusively allotted to the plaintiffs while certain other properties i.e. properties at Serial Nos. 4, 6 and 7 of Schedule I remained joint. For purposes of determination whether the said decree was a preliminary decree or a final decree or a decree partly preliminary or partly final, reference has to be made to the decree itself. It is also important to gather the intention of the parties from the compromise application because it was a compromise decree. We have already made reference to both these documents. In our view, intention of the parties is clear i.e. the entire controversy in the suit was sought to be finally settled. In a partition it is not necessary that each and every property must be partitioned and that the parties are put in separate possession of respective portions of properties falling to their share. In the present case, the parties mutually agreed to keep some of the properties joint. The reason for this is also available from the record. The properties which were kept joint were in a state that a partition by

⁴ (2003) 7 SCC 452

metes and bounds was not possible. Property at Serial No. 4 of Schedule I was under acquisition and there was no point in partitioning it by metes and bounds. Regarding Property No. 6 the share of the plaintiffs had been quantified in terms of money i.e. Rs 7500 (Rupees seven thousand five hundred only) payable by the defendants and the plaintiffs were given a right to execute the decree to that extent. Property at Serial No. 7 was fully occupied by outsiders with whom litigation was going on. The fate of the litigation was unknown. Therefore, understandably, it was not partitioned. These facts clearly show that at the time of compromise itself the parties had taken a final decision with respect to partition of all the joint family properties and the same had been given effect to. The compromise application does not contain any clause regarding the future course of action which gives a clear indication that nothing was left for the future on the question of partition of the joint family properties. The curtain had been finally drawn.

21. We need not refer to the decisions cited by the counsel for the parties. The judgments reiterate well-settled legal positions regarding which there is no controversy. As already observed, the case has to be decided on the basis of the proceedings held on 13-7-1978 including the compromise application which is an accepted document. In view of our decision that the decree dated 13-7-1978 was a final decree, the question whether there was an oral arrangement between the parties in October 1985 or there was a fresh family arrangement on 5-7-1992 becomes wholly irrelevant. In partition matters it is always open to the parties to enter into fresh arrangement. They may even decide to be again joint with respect to the properties which means that they may throw the properties in the common pool again. The parties are free to adopt whatever course of action they may choose in future by way of mutual arrangement.”

[Emphasis supplied]

24. The said judgment puts it beyond doubt that in a partition it is not necessary that each and every property must be partitioned and that the parties are put in separate possession of respective portions of properties falling to their share. Although the aforesaid judgment was rendered in the context of a compromise having been arrived at by the parties and there being more than one properties in the partition hotchpotch, yet the ratio

thereof is clearly applicable to the facts of the present case. Here too, the parties have accepted the partition plan as well as the decree whereof the said partition plan is a part. Such acceptance of the partition plan and the decree is strongly suggestive of the parties' intent to keep the property joint as partition thereof by metes and bounds is not possible. However, that by itself may not derogate from the position that the decree in question is a final decree and would require payment of stamp duty for attaining validity.

- 25.** The Hon'ble Supreme Court has subtly explained the difference between a preliminary decree and a final decree in the case ***Renu Devi vs. Mahendra Singh & Others***⁵. Paragraph 8 of the report which is apposite is extracted hereinbelow:-

"8. A preliminary decree declares the rights or shares of parties to the partition. Once the shares have been declared and a further inquiry still remains to be done for actually partitioning the property and placing the parties in separate possession of divided property then such inquiry shall be held and pursuant to the result of further inquiry a final decree shall be passed. A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then, as a result of the further inquiries conducted pursuant to the preliminary decree, the rights of the parties are finally determined and a decree is passed in accordance with such determination, which is, the final decree. (See CPC by Mulla, Vol. 1, 1995 Edn., p. 21.) The distinction between preliminary and final decree is this: a preliminary decree merely declares the rights and shares of the parties and leaves room for some further inquiry to be held and conducted pursuant to the directions made in the preliminary decree which inquiry having been conducted and the rights of the parties finally determined a decree incorporating such determination needs to be drawn up which is the final decree."

[Emphasis supplied]

- 26.** Here again upon the final decree incorporating the partition plan prepared upon conducting the inquiry in terms of Order XX Rule 18 of the Code and

⁵ (2003) 10 SCC 200

upon the parties having accepted the same, the same must mean “*final order for effecting a partition*”.

27. Bimal Kumar (supra) has quoted with approval an extract from a judgment of the Hon’ble High Court at Patna which reads thus:-

“**23.** In *Raghubir Sahu v. Ajodhya Sahu* the Division Bench of Patna High Court had ruled thus:

“In the present case, the decree was passed on compromise. It was admitted that by the compromise, the properties allotted to the share of each party were clearly specified and schedules of properties allotted to each were appended to the compromise petition. Therefore, no further enquiry was at all necessary. In such circumstances, the decree did not merely declare the rights of the several parties interested in the properties but also allotted the properties according to the respective shares of each party. Therefore, it was not a preliminary decree but it was the final decree in the suit.”

28. In the case at hand too the partition plan that allotted specific portions to the parties has been made part of the decree which the parties have accepted. That being so, it cannot be contended that the decree is not a “*final order for effecting a partition*” and would not be exigible to stamp duty.

29. As regards the petitioner’s submission that no stamp duty should be imposed as in the present case no new right has been created the same cannot be accepted. In cases like partition, stamp duty is levied as tax on the instrument of partition irrespective of the fact whether the transaction creates new rights or not. Moreover, the final decree is a formal record of the division of shares of the parties.

30. This Court therefore holds that the decree satisfies the definition of a “*final order for effecting a partition*” and would therefore be chargeable with stamp duty. The petitioner cannot be granted any relief of the nature sought for in the present writ petition.

31. Looking at the matter from another angle, the petitioner has approached this Court in effect assailing an order of assessment of stamp duty. This Court while exercising its power of judicial review under Article 226 of the Constitution of India, would interfere only if the order or action impugned is wholly arbitrary or without jurisdiction or patently illegal or in violation of the principles of natural justice. None of the aforesaid cases has been made out by the petitioner.

CONCLUSION:

- 32.** In such view of the matter, WPO 506 of 2025 stands dismissed. No costs.
- 33.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Om Narayan Rai, J.)