

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

And

The Hon'ble Justice Subhendu Samanta

FA 70 of 2016

With

CAN 1 of 2014

(Old No: CAN 11383 of 2014)

With

CAN 5 of 2024

Supratik Banerjee

Vs.

Archa Kumar Banerjee & Anr.

For the appellant : Mr. Kartick Kr. Bhattacharya,
Ms. Soumashree Dutta,
Ms. Papiya Naskar

Hearing concluded on : 07.01.2025

Judgment on : 07.01.2025

Sabyasachi Bhattacharyya, J.:-

1. The present first appeal involves a very short question and, as such, on consent of parties, the appeal itself is taken up for disposal.
2. The defendant in a partition suit has preferred the present appeal against a preliminary decree of partition whereby 1/3rd share of each

of the parties, that is, the plaintiff Nos. 1 and 2/respondents and the defendant/appellant in the suit property was declared.

3. Learned Counsel appearing for the appellant submits that it will be reflected from the records of rights that the appellant is in possession of a lion's share of the suit property. Learned Counsel for the respondents denies such contention and places reliance on the statement of DW1, that is, the defendant/appellant in his cross-examination to the effect that he does not have any document to show that he is exclusively occupying the suit property for about 12 years and above.
4. Upon hearing learned Counsel for the parties, we find that there is no dispute regarding the joint ownership of the parties in respect of the suit property and/or to the parties each being entitled to 1/3rd share in the suit property.
5. The bone of contention at best would be as to whether the plaintiff is in exclusive possession of any portion of the property. Insofar as such contention is concerned, it would be premature for the appellate court, while sitting in appeal over a preliminary decree, which focuses only on the declaration of the respective shares of the parties, to entire into such question at this stage.
6. In any event, it would be open to both sides to show before the Partition Commissioner and before the learned Trial Judge as to the respective existing physical possession of the parties which, as is the usual norm, shall be taken into account while allocating shares by the Partition Commissioner.

7. Thus, in effect, the dispute sought to be raised by the appellant in the present appeal is a non-issue at this stage but shall definitely be kept open to be decided by the learned Trial Judge at the passing of the final decree as well as for the Partition Commissioner to consider upon giving an opportunity to the parties to satisfy the Commissioner as to their respective physical possession.
8. In such view of the matter, we are not inclined to interfere with the impugned judgment and preliminary decree.
9. Accordingly, FA No. 70 of 2016 is dismissed on contest without costs, thereby affirming the judgment and preliminary decree dated July 31, 2014 passed by the learned Civil Judge (Senior Division), Suri, District – Birbhum in Title Suit No. 45 of 2011.
10. CAN 1 of 2014 and CAN 5 of 2024 also stand disposed of accordingly.
11. Interim order, if any, stands vacated.
12. The trial court records be sent down immediately.
13. However, it is made clear that it will be open to both parties to show their respective possession before the Partition Commissioner for the purpose of the same being taken into account in order to allocate appropriate portions of the property to the parties and also to consider the owetly money, if any, which is to be paid by the parties to each other, if required, to compensate the parties in respect of the inequality of possession, if there is any.
14. If such a point is raised, it will be open to the contending party to contest such point and for the Partition Commissioner to take such

issue into consideration as well as for the learned Trial Judge to deal with such issue at the final decree stage of the partition suit.

15. In view of the long pendency of the appeal, it is expected that the learned Trial Judge shall endeavour to dispose of the suit as expeditiously as possible, preferably within August 31, 2025.
16. It is made clear that no view has been expressed by this court regarding the respective possession of the parties and it will be open to the learned Trial Judge to adjudicate the same on merits while passing the final decree, if so deemed necessary for the purpose of allocation of shares.
17. A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree

(Subhendu Samanta, J.)