

Order 42  
08.09.22

The record is taken up for exparte order.

The plaintiff Mira Devi Shaw wife of Raj Kumar Shaw filed this suit on 30.06.17 for a decree of partition by metes and bounds in respect of the suit schedule property which includes premises no 2/H/4 Hospital Lane, P.S. Hastings, Kolkata – 22 and thika tenancy over the premises no B/40/2/H/5 Beltala Road, Kolkata – 26.

According to the plaintiff both the plaintiff and the defendants have moiety share in the premises mentioned above but the property remain undivided without any partition. This difficulty of possession faced by the plaintiffs as such plaintiff requested the defendants vide letter dated 03.05.17 for amicable partition of the suit property. Defendant failed to effect such amicable partition despite receiving the notice.

Under the circumstances, the plaintiff claimed partition in respect of the shares of the parties over the suit schedule property. Defendants no 2 to 5 failed to appear despite service of notice upon them as I find from order dated 17.08.17. Later on 08.02.19 service was effected upon defendant no 6. After the death of defendant no 4 substituted service was effected for his heirs namely defendant no 4(a) and 4(b).

Defendant no 2 to 5 filed W/S but later when the case was fixed for evidence was failed to contest the case for the reasons best known to them. Now the plaintiff while adducing evidence examined his son-in-law Kalicharan Shaw, son of Lt Baidyanath Shaw to depose before this court on his behalf as PW 1. In support of the case plaintiff submitted one Will executed by Kalicharan Shaw, son of Lt Ganga Shaw. Exbt 2 was certificate issued by Comptroller of Kolkata Thika tenancy in respect of premises no B/40/2/H/5 in favour of Mira Devi Shaw. Exbt 3 series KMC Tax receipt in respect of premises no 2/H/4 in the name of Shanti Devi Shaw and Mira Devi Shaw. Exbt 4 Certificate of mutation of the above premises. Exbt 5 letter issued by Mira Devi Shaw to the defendants claiming partition. Exbt 6 Grant of Probate of Will executed by Kalicharan Shaw.

After considering the unchallenged, oral and documentary evidence adduced by the plaintiff I am of the opinion that the plaintiff has been able to proof that plaintiff has 50% share in the suit schedule property whereas rest 50% of the suit property belongs to defendants. As the prayer of the plaintiff claiming partition has been refused she had valid cause of action to bring the suit. So the plaintiff is entitled to get the decree as prayed for.

Thus C.F. paid is proportionally accepted .

Hence, it is

Ordered

that the T.S. 864/17 is decreed exparte against the defendants in usual preliminary form for partition. It is hereby directed that the plaintiff has 50% share in the suit

schedule property whereas rest property belongs to defendants. The parties are hereby directed to amicably partition the suit property among them according to the shares declared above failing which either of the parties shall be at liberty to pray for final decree on payment of ad valorem court fees after determination of valuation through a Survey passed Commissioner by metes and bounds.

D/C by me

Sd/-  
Judge

Sd/-  
Judge 4<sup>th</sup> Bench