

## **Title Suit No. 3461 of 2010**

**Present: Shri Subhrajit Basu [J.O. Code: WB01238]  
Judge, Bench-IV, City Civil Court, Calcutta**

**Order No. 64**  
**17.01.2025**

The learned advocates for the parties are present.

The matter is fixed today for passing order in respect of the application filed by the plaintiffs under Order XXVI Rule 13 of the CPC dated 16.05.2024 praying for appointment of Advocate Commissioner to effect the partition in terms of the preliminary decree dated 02.12.2015 passed in the instant suit.

Be it noted in this regard that the plaintiffs had earlier filed an application under Order XXVI Rule 13 of the CPC on 12.07.2016 with similar prayers. However, the plaintiffs did not press the said application on 19.11.2024 and an endorsement to that effect was made by the learned advocate of the plaintiffs on the body of the said application on that day. It appears that due to oversight, no order to that effect was made by this Court on 19.11.2024. In order to regularize the matter, it is hereby ordered that the said application of the plaintiffs dated 12.07.2016 stands dismissed as 'not pressed'.

The application filed by the plaintiffs dated 16.05.2024 is now taken up for passing order.

The plaintiffs filed the instant suit against the defendants for partition.

The defendant entered appearance in the suit and filed his written statement along with a counterclaim.

Subsequently, after hearing the parties, by a judgement and decree dated 02.12.2015, this Court was pleased to pass the following order -

*"That the suit be and the same is decreed on contest in the preliminary from against the defendant without cost.*

*It is hereby declared that the plaintiffs have 50% share in the schedule property and the plaintiffs do get a decree of separate possession thereto by way of partition by metes and bounds.*

*The parties allowed two months' time from this date to effect the partition by metes and bounds amicably, failing which either of the party is at liberty to apply before this Court for partition by metes and bounds by appointment of an Advocate Commissioner, if and when appointed, the Advocate Commissioner shall effect the partition keeping in view of the present possession of the parties, compactness of allotment, if any, with the equitable numbers as far as practicable.*

*Parties do bear their cost of final decree proportionate to their respective shares."*

It is stated in the application of the plaintiffs dated 16.05.2024 that the defendant, being aggrieved by and dissatisfied with the said judgement and decree dated 02.12.2015, preferred two appeals before the Hon'ble High Court at Calcutta, one being F.A. No. 112 of 2016 against the

preliminary decree and the other being F.A. No. 49 of 2023 against the rejection of the counterclaim.

According to the plaintiffs, the said two appeals were heard analogously by the Hon'ble Court and thereafter, by Judgement and Order dated 05.04.2023, the Hon'ble Court was pleased to dismiss both the appeals filed by the defendant upon affirming the judgment and decree dated 02.12.2015 of this Court.

It is the case of the plaintiffs that the defendant forcefully tried to encroach into the right and share of plaintiffs and as such, it is necessary to partition the property to save the right and share of plaintiffs and until and unless the decree dated 02.12.2015 is executed by appointment of a commissioner to effect the partition, the plaintiffs shall suffer irreparable loss and injury.

No written objection has been filed by the defendant against the plaintiffs' application under Order XXVI Rule 13 of the CPC dated 16.05.2024.

Perused the judgement and decree dated 02.12.2015 passed by this Court and the Judgement and Order of the Hon'ble High Court at Calcutta dated 05.04.2023 passed in F.A. No. 112 of 2016 and F.A. No. 49 of 2023 as available on record.

Upon going through the materials on record, this Court finds that the suit was decreed in preliminary form with a direction upon the parties to effect partition amicably by metes and bounds within two months from the date of delivery of the judgement. As the parties have failed to effect partition in final form within the stipulated period and since the appeals against the judgement and decree dated 02.12.2015 have also been dismissed by the Hon'ble Court upon affirming the preliminary decree, this Court is inclined to allow the application filed by the plaintiffs dated 16.05.2024.

As such, the instant application filed by the plaintiffs under Order XXVI Rule 13 of the CPC is allowed.

Accordingly, ***Sri Chandan Ghosh, Chartered Engineer & Advocate*** is appointed as the Engineer Commissioner to effect the preliminary decree dated 02.12.2015 in final form.

The Ld. Engineer Commissioner is directed to effect the partition by metes and bounds in terms of the preliminary decree dated 02.12.2015 maintaining the existing possession of the parties as far as practicable.

The plaintiffs are directed to deposit a sum of Rs.8,000/- provisionally towards the fees of the Chartered Engineer Commissioner.

Inform the Ld. Ld. Engineer Commissioner.

To 13.03.2025 for Commissioner's Report and further order.

At my dictation

Sd/-

**Judge, Bench-IV  
City Civil Court, Calcutta**

Sd/-

**Judge, Bench-IV  
City Civil Court, Calcutta**