

Title Suit 02 of 2026 (Reg. 02 of 2026)
CNR No. WBSP07-000010-2026
J.O. Code. WB01066

Order dtd. 30/04/2026

Today is fixed for passing order in the matter of passing Judgment on Admission as prayed by the defendants in their petition dtd. 17/04/2026 filed under Order 12 Rule 6 read with Section 151 of the Code of Civil Procedure.

Defendants file hazira.

Record is taken up for passing order.

Perused the application in hand, Written Objection filed by plaintiffs, the plaint, Written Statement, Original Deed of conveyance bearing no. 165 of 1987, copy of death certificates of Late Shyamal Kr. Roy and Samir Kr. Roy.

The suit was originally filed in the Court of Ld. Civil Judge Senior Division, Sealdah and subsequently, has been transferred to this Court under order of Ld. District Judge, 24 Parganas (South).

Order 12 Rule 6 of the Code of Civil Procedure states *where admissions of fact have been made either in the **pleading or otherwise**, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or on its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.*

Plaint case is that Durga Pada Roy (Ancestor of parties to the suit) and Samir Kr. Roy (Deceased Defendant No.1) jointly purchased the suit property by dint of a Sale Deed bearing no.165 of 1987. Subsequently, said Durga Pada Roy had expired leaving behind three sons namely, Samir Kr. Roy, Shyamal Kr. Roy and Tapas Roy and three daughters namely, Sulekha Roy, Renuka Chandra and Monika Gain as his legal heirs.

The defendants in their written statement and also in their application under Order 12 Rule 6 of C.P.C admitted the above factual aspect clearly and unambiguously without any question of doubt.

Further, the plaint case is that Shyamal Kr. Roy (predecessor-in-interest of plaintiffs) died on 24-11-2020 leaving behind the plaintiffs

as his legal heirs (Relied on original Death Certificate of Late Shyamal Kr. Roy).

This fact is also admitted by defendants in their written statement.

In the course of proceeding, defendant No. 1, Samir Kr. Roy had expired, and on the basis of application dtd. 13/01/2026 filed by the plaintiff no.1, name of defendant No.1 was expunged vide. order dtd. 13/01/2026 on the ground that all the legal heirs of deceased defendant No.1 are on record.

This fact is also admitted in the application under Order 12 Rule 6 of C.P.C.

Surprisingly, plaintiffs who are the successors-in-interest of Late Shyamal Kr. Roy, in the plaint did not whisper anything about their entitled share portion in the suit property. Even, in their written objection filed against application under Order 12 Rule 6 of C.P.C, the plaintiffs only denied the share portion of the defendants as claimed there in, but did not specify plaintiffs' entitlement. The plaint in my considered opinion, is a clever drafting to create confusion about share portion of the parties to the suit.

At hearing, plaintiffs have failed to show any ground not to allow the prayer for passing judgment on admission.

The defendants in their pleading and petition under Order 12 Rule 6 C.P.C. clearly, unambiguously and definitely admitted entire fact of the case and thus, prayed to pass judgment on admission declaring that the plaintiffs are entitled to get $1/12^{\text{th}}$ share jointly in the suit property and defendant nos.2 to 5 are entitled to get $11/12^{\text{th}}$ share jointly in the suit property.

As per pleadings, the suit property was jointly purchased by Durga Pada Roy and Samir Kr. Roy thereby, they became joint owners and co-sharers of $1/2$ share each (relied on deed of conveyance bearing no.165 of 1987).

After demise of Durga Pada Roy, his $1/2$ share was devolved equally on his 6 children who eventually got $1/12^{\text{th}}$ share each. In this way, Samir Kr. Roy (defendant No.1) alone became co-sharer of ($1/2 + 1/12^{\text{th}}$) = $7/12^{\text{th}}$ share in the suit property.

Subsequently, one of the brothers, namely, Shyamal Kr. Roy (predecessor-in-interest of the plaintiffs) had expired. After his demise, because of lack of peaceful coexistence, legal heirs of Late Shyamal Kr. Roy instituted this suit seeking partition.

During pendency of the suit another brother namely, Samir Kr. Roy (deceased defendant No.1) had expired.

In accordance with **Section 8 of the Hindu Succession Act, 1956**, the property of a male Hindu devolves firstly, upon Class I heirs which includes son, daughter, widow, mother etc. In the instant case Samir Kr. Roy died bachelor without leaving any Class I legal heir.

As such, Class II legal heirs will be entitled to inherit the property of Late Samir Kr. Roy in their sequence excluding the later entries in the list. Among class II heirs, father of the deceased is entitled to inherit at the first instance. As the father of the deceased had already expired, thus, the property devolves upon (1) son's daughter's son, (2) son's daughter's daughter, (3) brother and (4) sister of the deceased as per entry No.II of class II heirs.

As in the case, Samir Kr. Roy died bachelor and unmarried without having any issue, thus, his entire share in the suit property shall devolve upon his leaving brother and sisters. (herein defendant Nos. 2 to 5).

The plaintiffs being successors of a precessed brother, shall be excluded by the surviving brother and sisters of the deceased.

In this way, $7/12^{\text{th}}$ share of deceased defendant No.1 devolves upon defendant Nos.2 to 5 jointly and thus, defendant Nos.2 to 5 became entitled to a share of $11/12^{\text{th}}$ ($7/12^{\text{th}}$ + $4/12^{\text{th}}$) jointly in the suit property; and the plaintiffs are jointly entitled to a share of $1/12^{\text{th}}$ in the suit property.

As the admission of defendants is found to be clear, definite, unambiguous and with true gesture, thus, upon relying on documents on record, I do hereby allow the application dated 17/04/2026 filed by defendant Nos.2 to 5 under Order 12 Rule 6 read with Section 151 of the Code of Civil Procedure without any order as to costs.

Considering all aspects of the suit and in view of the admission made by the defendants, the Court is of opinion that the parties to the

suit are co-sharers in the suit property and there is no legal impediment to pass a preliminary decree on admission under purview of Order 12 Rule 6 of the Code of Civil Procedure.

Fixed court fees is paid in the suit.

No separate judgment is prepared but the suit is decided by this final order.

Hence, It is,

ORDERED

that the instant suit be and the same is decreed in preliminary form on admission under Order 12 Rule 6 of the Code of Civil Procedure without any order as to costs.

A decree is here by given declaring that the plaintiffs are jointly entitled to 1/12th share and defendant Nos. 2 to 5 are also jointly entitled to 11/12th share in the suit property.

Parties to the suit are hereby directed to effect the partition of the suit property amicably in accordance with their respective shares as declared, within three months from this day, in default, partition will be caused by way of appointing survey passed advocate commissioner at the instance of either of the parties to the suit.

Preliminary decree be drawn up accordingly.

Suit is thus, disposed off.

Dealing assistant is directed to note in relevant registers and CIS.

Dic. & corrd. by me

Sd/-

Judge, S.C.C

Sd/-

Judge,

Small Causes Court, Sealdah.