

**T.S. No. 27 of 2014**

Order No. 112  
Dated 04.05.2015.

Today is fixed for ex-parte argument.

Heard the argument of the Ld. Advocate for the plaintiff.

Now the record is taken up for passing order after ex-parte hearing of the suit.

The brief facts of the plaintiff so appears from the plaint as well as revised plaint in this suit is that the parties to this suit are lineally descendant from common ancestor guided by Hanafi School of Mohammedan Law. One Haji Khalil Ahmed, the predecessor in interest in respect of the suit property described in schedule-A of the plaint died leaving behind the plaintiffs. After the death of Haji Khalil Ahmed, defendant-1 the eldest son of the family was in possession of the suit property and was realizing rents as well as profits emanates from the said suit property. Plaintiffs on several occasions demanded accounts from the defendant-1 in that respect but he did not let his ears on the request of the plaintiffs. Thereafter, defendant-1 approached Kazi Shariat Darul Qaza Amarat Sharia Phulwari Sharif, Patna who after due consideration of the prayers of both sides, declared shares in respect of the schedule property entitled by the plaintiffs and defendants. However, after passing of the said order, defendant-1 did not care to put the same in execution. Thereafter, Ld. Advocate sent a notice to the defendant-1 informing the demand of the plaintiff as regards to their share in the suit property and accounts thereof which was duly received by the defendant-1 and inspite of the same, he did not feel any interest to reply on which, the cause of action of the suit arose. Thereafter, plaintiffs filed the instant suit against the defendant praying for a preliminary decree of partition of share of the plaintiffs to the extent of 2 annas each and consequential relief thereof.

On receipt of the summons, defendant appeared and filed their written statement but later on left to contest the suit. Issues were framed but due to absence of the defendants, this suit was taken up for ex-parte hearing.

On previous occasion, this court passed an ex-parte decree on

08.03.2007 vide order-51 but after considering the prayer of the defendants, the said ex-parte order was set aside and the preliminary decree was re-opened.

During the proceeding of the suit, defendants again did not take any steps for which, the suit was again fixed for ex-parte hearing.

To prove the case, plaintiff Md.Salauddin plaintiff-1 (vii) as per revised plaint duly authorized by plaintiff-1 (i to vi) deposed on behalf of all the plaintiffs as PW-1 and one Md. Mujibar Rahman an authorized representative of the Central Court, Darul Qaza Amarat Shariah Bihar, Orissa, Phulwari Sharif, Patna adduced as PW-2 on summon. The original judgement of Darul Qaza written in Urdu duly translated by the Central Translation Bureau, Ministry of Home Affairs, Govt. of India was marked as Ext.1d and the letter of authorization of the Imarat Shariah was marked as Ext.2.

Perused the examination in chief on affidavit and materials on record as well as the evidence so adduced by the plaintiff. On the basis of the unchallenged testimony of the witnesses and after due consideration of the documents formally proved by the plaintiffs, it appears to this court and this court is convinced to hold that plaintiff-1(i) to 1(vii) and the plaintiff-2 are entitled to get a partition of the schedule-A property in respect of their 2 annas share each.

Hence, it is,

**ORDERED**

that the suit be and the same is decreed ex-parte in preliminary form against the defendants without cost. Plaintiff-1(i) to 1(vii) are jointly entitled to 2 annas share of the schedule property and plaintiff-2 is also entitled to get 2 annas share of the schedule property.

Parties are given 6 months time to make amicable partition of the schedule property by metes and bounds in terms of the preliminary decree, failing which, either party will be at liberty to pray for partition by metes and bounds by partition commissioner.

D/c by me.

Judge,S.C.C.,Sealdah.

Judge, S.C.C., Sealdah.