

Title Suit 31 of 2015 (R- 173/15)

Order no. _____ dated 18.06.2016

Today is fixed for passing order on the petition under order 12 rule 6 filed by the plaintiff according to the direction of the Hon'ble High Court at Calcutta in C.O. No. 204 of 2014 passed on 23.02.2016.

Heard the submissions of the Ld Advocates of both sides and perused the petition, objection and reply thereon.

It appears from the submissions made by both sides that the share of the parties to the suit over A Schedule and C Schedule properties are admitted. Hon'ble Court also asked this court to consider this aspect in proper perspective. On perusal of the petition and the submissions made by both sides, this court is of the opinion that if on the basis of the views and observation of the Hon'ble Court decree is granted over A Schedule and C Schedule property keeping aside the decision over B Schedule Property, then the said decree will be in-executable because the properties so described in C Schedule is vague. For proper and meaningful decision in the instant case, the evidence requires to be laid by the parties and in absence of the evidence, decree cannot be passed.

I have also considered the decisions referred by both sides. Those decisions cannot be said to be applicable in the instant suit because the admission so made is not full but in part and only on the basis of the materials available in the record, no such preliminary decree in part can be granted at this stage. Hon'ble Court in the order referred herein above did not direct this court to pass an order and a decree on the basis of the observation made by the Hon'ble Court. This court on perusal of the order understood that the Hon'ble Court asked this court to dispose of this suit keeping the observation as regard to 50% share of the parties as conclusively decided.

In view of the order of Hon'ble High Court referred herein above, the share of the parties have been determined in respect of two sets of properties. It is further observed from the order of the Hon'ble Court that schedule-B property is not a joint property and the plaintiff is totally silent in respect of the said observation. Therefore, to determine whether B-schedule property is joint or not, evidence is necessary to be considered.

Therefore, on the basis of above discussions and considering the aspect of the observation of the Hon'ble High Court in this perspective, the petition U/o 12 Rule 6 CPC filed by the plaintiff cannot be allowed.

Hence, it is,

ORDERED

That the petition U/o 12 Rule 6 CPC filed by the plaintiff is rejected on contest and without cost.

Fixing 13.07.2016 for framing of issues.

D/C by me

Judge. Small Causes Court

Sealdah

Judge. SCC, Sealdah