

In the Court of Additional District & Sessions Judge,
2nd Court, Sealdah, South 24 Parganas
Title Appeal 31 of 2024(R-31/24)
Present: Sri Abir Chatterjee, Additional Dist. & Sess. Judge.
Judicial Officer's Code : WB00833

Order Number 09 dated 21.01.2025

Case record is taken up for order in respect of the stay petition.

It appears that Ld Trial Court in TS No.266 of 2008 was pleased to decree the suit in favour of the plaintiff/respondent in part and in preliminary form. It also appears that the suit was for partition, declaration and permanent injunction along with other relief valued at Rs.28,200/-.

During the course of hearing, Ld Advocate for the appellant submitted that judgement and preliminary decree of the Ld Trial Court has been challenged on several legal and factual parameters which include valuation of the property, erroneous application of law in appreciating the case of oral Heba and there is also a case of non-joinder of necessary parties. It was further argued that appellant stands a fair chance of success in this matter.

Objecting to the application for stay, Ld Advocate for the respondent submitted that Ld Trial Court had issued a preliminary decree and the judgement is quite sound and does not merit stay of the process of final decree. Attention of the Court was also drawn to the unreported decision in FAT 369 of 2023, wherein Hon'ble Court was pleased to grant conditional stay while the final decree proceeding continued.

It was further submitted in reference to the petition dt.06.08.2024 that if the application for survey commission which was filed in the trial Court in the final decree proceeding be sent back to the trial Court, the proceeding of final decree may be continued.

Objecting to the application, it was stated that there is a distinction between the matter in FAT 369 of 2023 and that LCR was not consigned when the matter was placed in the Hon'ble Court. That LCR cannot be segregated and a petition from the record cannot be sent to the trial Court in isolation.

After considering the submission of both sides, it appears that appellant had presented an arguable case in the appeal on both fact and law which requires exhaustive appraisal.

Accordingly, this Court grants an order of stay of the preliminary decree dt.02.05.2024 till disposal of this appeal.

So far the petition dt.06.12.2024 is concerned, it appears that respondent/plaintiff had initiated the proceeding for final decree and one application for survey commission has been filed in the trial Court in connection with the said final decree proceeding. Though Ld Advocate for the appellant tried to impress the Court that LCR cannot be made into parts, however, it will appear that Civil Rules & Order do not specifically bar segregation of LCR based on requirement or keeping a skeleton of the proceeding in the trial Court. Moreover, Hon'ble Court had allowed maintaining skeleton record in the trial Court for proceeding with final decree. The ratio which can be garnered from the order in order dt.03.12.2024 in FAT No.369 of 2023 (CAN 1&2 of 2023) that pending hearing of the appeal the final decree

proceeding can progress to a certain extent and this will prevent any prejudice to the decree holder from any delay in disposal of the appeal. Moreover, it is the respondent/decreed holder who will run the risk of continuing with the final decree proceeding pending the appeal. The petition dt.06.08.2024 for survey commission is not required for disposal of this appeal and hence said petition can be sent back to the trial Court. No prejudice will occasion upon the appellant if the survey petition is sent to the Trial Court.

Being fortified by the ratio of FAT No.369 of 2023 (CAN 1&2 of 2023), it appears that similar methodology can be applied in this instant matter.

Hence, it is,

ORDERED

The petition dt.06.12.2024 seeking survey commission be sent to the Trial Court is allowed.

The Trial Court stands directed to maintain skeleton record for the purpose of proceeding with the final decree in TS No.266 of 2008. The Ld Trial Court will be at liberty to maintain skeleton record on the basis of certified copies which may be supplied by the plaintiff/respondent/defendant/appellant and the original petition dt.06.08.2024 for survey commission which will be sent by this Court. The final decree proceeding in TS No.266 of 2008 shall continue before the trial Court but no final decree shall be drawn up till disposal of the present appeal.

Let a copy of this order along with the petition dt.06.08.2024 for survey commission be sent to the Court of Ld Civil Judge (Jr. Div.), 2nd Court, Sealdah with a request to proceed with the final decree as directed in this order.

To 29.03.2025 for hearing of appeal.

Dict. & Corr. by me,

Sd/- A. Chatterjee
Addl. Dist. & Sess. Judge, 2nd Court,
Sealdah.

Sd/- A. Chatterjee
Addl. Dist. & Sess. Judge, 2nd Court,
Sealdah.

Memo _____ Dt.21.01.2025

Copy of this order along with the petition dt.06.08.2024 is forwarded to the Ld Civil Judge (Jr. Div.), 2nd Court, Sealdah for information and with a request to proceed with the final decree as directed in this order.

Addl. Dist. & Sess. Judge, 2nd Court,
Sealdah.