

IN THE HIGH COURT OF ORISSA AT CUTTACK
R.S.A NO.153 OF 2022

Sashirakha Pradhan & Others *Appellants*
Mr.Saumya Mishra, Advocate
-versus-
Shyama Rout & Another *Respondents*

CORAM:
MR. JUSTICE D.DASH

ORDER
07.12.2022

Order No.

01. 1. This matter is taken up through hybrid arrangement (virtual/physical) mode.
2. Heard.
3. The Appeal is admitted to answer the following substantial questions of law:-
- (i) Whether the First Appellate Court before proceeding to apply provision of section-6 of the Hindu Succession (Amendment) Act, 2005 in favour of the Respondent No.1 (Plaintiff) to allot her with the share equal to her brothers ought to have first decided as to whether there had been a partition of all these properties prior to the coming into force of the said Act and for the purpose was under legal obligation to record a finding on that score by taking into account the dealing of the properties, conduct of the parties etc. as emanate from evidence?
- (ii) Whether the First Appellate Court while passing preliminary decree for partition allotting 1/4th share to the Respondent No.1 (Plaintiff) over Schedule-A, C, D, E and J properties having

ignored the factum of prior partition effected in respect of those properties much before coming into force into Hindu Succession (Amendment) Act, 2005 and without saving said partition as provided under sub-section-5 of section-6 of the said Act, the preliminary decree as passed is bad in law?

4. Issue notice to the Respondents by registered post with AD. Steps be taken within a week hence. In that event, notice be issued fixing a short returnable date.

5. The matter be listed in the week commencing 24th January, 2023.

*(D. Dash),
Judge.*

ORDER

07.12.2022

I.A. NO.1208 OF 2022

Order No.

02.

1. Heard.

2. Issue notice as above.

Accept one set of process fee.

3. As an interim, it is directed that the final decree in C.S. No.38 of 2001 (FD) in the file of learned Civil Judge (Sr. Division), Bhawanipatna shall not be sealed and signed without the leave of this Court.

Issue urgent certified copy as per rules.

*(D. Dash),
Judge.*