

97 **13.12.**
2024

Ct. No. 08

ab

FMAT 491 of 2023
IA No. CAN 1 of 2024
IA No. CAN 2 of 2024

Nijamuddin Ostagar
Vs.
Ajila Bibi and others.

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,
Ms. Poulami Chakraborty.

... for the appellant.

Mr. Md. Younush Mondal,
... for the respondent nos. 19 to 24, 26 & 29.

The instant appeal arose from an order of remand. Technically, there is no requirement of formulating the substantial question of law yet this Court feels that in order to answer a core issue and the defendants/respondents should not be put on surprise, the point of law involved in the instant appeal should be framed.

A suit for partition filed by the plaintiff/appellant was decreed in preliminary form, which was assailed by some of the defendants/respondents before the first Appellate Court. The first Appellate Court remanded the matter on the ground that all the heirs of Meherjan Bibi were not impleaded as party thereto nor the written statement filed by some of them was taken into consideration.

Our attention is drawn to the findings returned by the Trial Court that the property included in the suit for partition were inherited by them from their predecessor, who got the said property on the basis of the deed of partition executed and registered in 1960 (Exhibit-b-Exhibit-1). It appears that by virtue of the said partition deed the property, which was jointly owned by the predecessor of the plaintiffs and the other co-sharers

and the Meherjan Bibi, were separated by metes and bounds and, therefore, the heirs of Meherjan Bibi cannot be regarded as co-sharers in respect of a property allotted to the predecessor in interest of the present plaintiff on the strength of the said partition deed.

We, thus, find that the appeal should be heard on the following questions of law, namely,

(1) Whether the heirs and successors of Meherjan Bibi are the necessary and proper party in a suit for partition amongst the heirs and successors of the other co-sharers of Meherjan Bibi after the joint property was separated on the basis of a partition deed of 1960?

(2) Whether the Court of Appeal below was justified in remanding the matter to determine the shares of the heirs and successors of Meherjan Bibi without recording any findings whether the properties included in the said suit were ever allotted to Meherjan Bibi under the said partition deed of 1960?

The appellant is directed to serve the copy of the application for stay being CAN 1 of 2024 upon the respondents barring respondent nos. 19 to 24, 26 & 29 by speed post and shall file affidavit of service on the returnable date.

The aforesaid respondent nos. 19 to 24, 26 & 29 have entered appearance through Mr. Md. Younus Mondal, learned Advocate and wave the notice of appeal. Mr. Mondal undertakes to file Vokatnama on behalf of the aforesaid respondents within a week from date.

Since we have admitted the appeal and in the event the Trial Court proceeds to decide the suit and further preliminary decree is passed, it would virtually render the instant appeal infructuous.

Accordingly, there shall be stay of all further proceedings in Title Suit No. 12 of 2007 pending before the learned Civil Judge (Senior Division), 2nd Court at Krishnagar, Nadia for a period of eight weeks from date or until further order/orders of this Court, whichever is earlier.

The application for stay is made returnable one week after reopening of this Court following Christmans Vacation for the year 2024.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)