

OIPD-6

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
Ordinary Original Civil Jurisdiction

IA NO. GA/22/2025
In CS/298/2012

SRI SHYAMAL KUMAR DAS DEB & ORS.
VS
ANINDITA RAY & ORS.

Before:
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 2ND May 2025

Appearance:
Mr. I. B. Jha, Adv.
...for the plaintiffs

Mr. Ayan Dutta, Adv.
Mr. Rajib Mullick, Adv.
Ms. Ayantika Saha, Adv.
..for the defendant/petitioner in GA/22/2025

The Court: This is an application filed by defendants with a prayer for direction of the sale of the immovable property being premises No. 109, Acharya Jagadish Chandra Bose Road, Kolkata – 700014, P.S. Muchipara, being only one storied building containing one big room with wooden board partitions and a small room used by the plaintiff as a Diagnostic Centre situated on the land measuring 1 cottach 1 chittack 5 sq ft by way of publication in the newspapers and the consequent distribution of the sale-proceeds arising out of the sale of the said properties amongst the parties in accordance with their respective share as expeditiously as possible.

It is the contention of the defendants/petitioners that the plaintiffs instituted one suit for partition before this Court being C.S. No. 298 of 2012. The said suit was disposed by virtue of final decree by an order dated August 07, 2023. During pendency of the suit by order dated March 18, 2019 an advocate commissioner was appointed to make physical partition to the properties in question by metes and bounds. The learned Commissioner on July 24, 2023 filed his report wherein it was categorically stated as follows:

“And regarding the other property at 109, Acharya Jagadish Chandra Bose Road, Kolkata-700014:- it is stated by the surveyor Mr. Subrata Banerjee that the said building is only one storied building containing one big room with wooden board partitions and a small room used by the plaintiff as a Diagnostic Centre. The surveyor clearly stated in his report that the said property cannot be partitioned and the only option is to sell the property and pay the amount to the parties as per their shares.”

It is further contended that upon perusal of the report filed by the learned Commissioner of partition it will be evident that the said property is in capable of being partitioned thereby making it impossible for the distribution of the respected undivided share of the parties in such properties amongst themselves. It is also contended that an order be passed directing sale of immovable property being premises no. 109, Acharya Jagadish Chandra Bose Road, Kolkata- 700014, PS Muchipara being only one storied building containing one big room with wooden board partitions and a small room used by the plaintiff as a diagnostic Centre situated on the land area measuring 1 cottah 1 chittack 5 sq. ft. by way of newspapers publication and distribution of sale proceeds amongst the parties as per their shares. The plaintiffs/opposite parties have filed opposition to the petition of the defendants. It is the contention of the plaintiff case that pursuant to the order dated 07.08.2023 passed by this court, the decree department asked the Collector of Kolkata, Government of West Bengal to access the stamp duty of the decree dated 07.08.2023 passed in C.S. No. 298 of 2012 and in compliance with the said requirement the said collector of Kolkata vide Memo No. 10-R-S/Kol/Collec/24 dated 15.02.2024 informed the decree department, Original Side, High Court Calcutta in writing that the stamp duty of the said decree is Rs. 2,67,547/-. As such the plaintiffs and defendants are required to deposit the said amount proportionately. Although the plaintiffs are ready and willing to deposit the stamp duty

proportionately as per their shares but since the defendants are not willing and delaying to deposit the said amount proportionately as per their shares the plaintiffs are unable to deposit the same. The defendants/petitioners by their affidavit in reply denied the allegation made in affidavit in opposition.

Heard learned Advocate for the petitioners/defendants and learned Advocate for the plaintiffs/opposite parties perused the petition filed and materials on record.

Learned Advocate for the petitioners submits that the petitioners are ready and willing to pay the stamp duty from the proceeds of sale and necessary direction may be used in this regard. Upon hearing the learned Advocates and considering the facts of the case this Court is of the view that as the property sought to be sold is an impartible estate belonging to the parties prayer for sale should be allowed. Let there be an order in terms of prayer (a), (b) and (c) of the notice of motion dated 08.01.2025.

Sri Nara Narayan Ganguly Learned Advocate ph-no:- 9830620014 is appointed as Special Officer to cause sale of the immovable property being premises No. 109, Acharya Jagadish Chandra Bose Road, Kolkata- 700014, PS-Muchipara. Upon making prior valuation by a registered valuer; such sale shall be made by public auction by making publication in one English and one Hindi newspaper. The learned Special Officer shall be entitled to an initial remuneration of 1500 gms to be shared by the parties according to their shares. The expenditure for newspaper publication and fees of valuer shall be paid by the parties before newspaper publication is being made and fees of valuer to be paid on submission of valuation report. The condition of deposit of 10% of the Reserve Price shall be provided in the notice. An initial of deposit of Rs. 50,000/- shall be made before Learned Special Officer to meet the expense of sale. Such deposit shall be made and remuneration of Special Officer to be paid by 22/05/2025. The sale-proceeds shall be deposited in any nationalised bank and parties will pay the stamp duty in terms of final decree

from the sale proceeds. Upon completion of sale and payment of stamp duty report shall be submitted to this Court by the learned Special Officer. Parties shall take steps further to draw up and complete the final decree passed in C.S. No. 298 of 2012.

Learned Special Officer shall maintain accounts and submit report from time to time. Let this matter appear on 02-07-2025 for report by Special Officer and further orders.

(BISWAROOP CHOWDHURY, J.)

A.Bhar (P.A.)