

OD-4

ORDER SHEET

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

CS/136/2023
IA NO: GA/1/2024, GA/2/2025

KAILASH NEVATIA
-VS-
SHIV KUMAR NEVATIA AND ANR

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date: March 12, 2025.

Appearance:

Mr. Nirmalya Dasgupta, Adv.

Mr. Dibanath Dey, Adv.

...for the petitioner

Mr. Rohit Banerjee, Adv.

Mr. A.P. Tarafdar, Adv.

... for the defendants

The Court:- Mr. Nirmalya Dasgupta, learned Advocate, is appearing for the petitioner.

Mr. Rohit Banerjee, learned Advocate, is appearing for the defendants.

The matter is listed as "To Be Mentioned" on receipt of the report from the office of the Learned Master dated 11th March, 2025.

By an order dated 27th January, 2025 this Court has passed an order by allowing preliminary decree in terms of prayers (a) and (b) of the plaint. When the department has processed for drawing preliminary decree, the department found that in prayers (a) and (b) of the plaint, the plaintiff has only prayed for his share and no share of the defendants mentioned and as such, the department is facing difficulties to draw the preliminary decree in terms of the order passed by this Court.

Counsel for the parties submit that in terms prayers (a) of the plaint the plaintiff is entitled to get $2/3^{\text{rd}}$ share and the defendants are entitled to get $1/6^{\text{th}}$ share each in the property situated at 76, Bentinck Street, P.S. – Bowbazar, Kolkata – 700001 and in terms of prayer (b), the plaintiff and the defendants are entitled to get $1/3^{\text{rd}}$ share each over the property situated at 123A, Lenin Sarani, Kolkata – 700013.

The order dated 27th January, 2025 is modified to the extent that the plaintiff is entitled to get $2/3^{\text{rd}}$ share and the defendants are entitled to get $1/6^{\text{th}}$ share each in the property mentioned in prayer (a) of the plaint and the plaintiff and the defendants are entitled to get $1/3^{\text{rd}}$ share each in the property mentioned in prayer (b) of plaint. This part of the order be incorporated in the order dated 27th January, 2025.

The Partition Commissioner appointed by the Court has submitted a report and submits that one of the property which is situated at 123A, Lenin Sarani, Kolkata – 700013 is full of encumbrances as the tenants are in occupation of the said premises.

As regards, the other properties there is a dispute with regard to the boundary wall in between plot no. 75 and 76 of Bentinck Street, P.S. – Bowbazar, Kolkata – 700001.

The Partition Commissioner submits that it is not possible for him to ascertain the total value and partition the suit properties unless a proper valuer/ surveyor/Amin is appointed.

Considering the submission made by the partition Commissioner and on perusal of the report submitted that partition Commissioner, this Court finds that for the purpose of partition of the suit property, the partition

Commissioner is at liberty to appoint the valuer/surveyor/Amin for effecting proper partition of the suit property in terms of preliminary decree.

It is made clear that if the Partition Commissioner has appointed any valuer/surveyor/Amin for partition of the suit property, the remuneration of the said valuer/surveyor/Amin shall be paid by the plaintiff and the defendants in three equal shares.

(KRISHNA RAO, J)