

(1932) 11 CAL CK 0001

Calcutta High Court

Case No: None

Amulyacharan Mitra

APPELLANT

Vs

Prakashchandra Mitra
and Another

RESPONDENT

Date of Decision: Nov. 23, 1932

Citation: AIR 1933 Cal 502 : 145 Ind. Cas. 313

Hon'ble Judges: Lort-Williams, J; Lord Williams, J

Bench: Division Bench

Judgement

Lort-Williams, J.

In this case there was a preliminary decree for partition made on 29th July 1921, in which the shares of the parties were declared in certain premises No. 18, Shampukur Street, Calcutta, and it was ordered that a partition be made of the said premises into eight equal parts or shares, and the commissioners was ordered, if he found that the premises could be conveniently and reasonably partitioned by metes and bounds, to make such division, with power to him to award compensation in money by way of equalizing the partition. It was further ordered that, in the event of the commissioner finding that the premises could not be conveniently and reasonably partitioned by metes and bounds, he was to report to the Court. It was further ordered that the expenses of the commission of partition were to be borne by the parties in proportion to the value of their respective shares. In the plaint, it was alleged that the plaintiff had made certain improvements and additions to these premises, and that it had been agreed between the parties that the costs of such improvements should be borne partly by the defendants.

2. The commissioner heard evidence, and the defendants tried hard to prove that it would be convenient and reasonable to partition this house by metes and bounds: but the commissioner eventually came to the conclusion that it would be impossible to divide the premises in any manner which would be convenient to the parties and this finding he has reported to the Court. The plaintiff now asks that the premises

may be sold, and that the sale proceeds may be divided between the parties, but he contends that from the total price to be received for the premises there ought first to be deducted the present value of the said improvements. He contends that a sum of Rs. 5,000 was expended by the plaintiff's predecessors for improvements and additions to the premises and that their present value is Rs. 2,805. His contention is based upon the argument that the price, which may be obtained for the premises, will be enhanced to the extent of the present value of the improvements, and therefore that this amount ought to be deducted from the price obtained, before a division is made between the parties. He further contends that, as the whole of the expenses before the commissioner were caused by the contentions of the defendants which have failed, these costs ought not to be taken out of the corpus of the estate. It is contended by the defendant that this question of the improvements cannot now be considered, that such matters must be considered at the time when the preliminary decree is made, and must be provided for in the decree, and directions given to the commissioner to take such improvements into consideration.

3. I have no doubt that argument is correct in a case where partition by metes and bounds has been directed, and the shares declared, and that partition has been made. Further, I am of opinion that in a case where it is possible to divide a house by metes and bounds, and it is contended by one of the parties that he has spent money upon improvements or additions, it is not lawful to direct that the other parties should make compensation in money to the party making the improvements, in order to equalise the burden. It is true that an equity has been created in favour of the party who has made the improvements, but in such a case, the only way to recognize his equity is for the commissioner, if this be possible to allot to him that portion of the premises upon which the improvements and additions have been made. If that cannot fairly be done, then the party making the improvements must lose the value of his equity.

4. No such difficulty arises in a case such as this, where it has been found impossible to divide the premises by metes and bounds. Nor do I think that this question of the improvements has yet been considered by the Court in the light of the position which has now arisen. It may have been, and probably was considered, in anticipation of the commissioner being able to divide the property by metes and bounds. As I understand the decree, if the commissioner found that it was impossible to make such a division, then he was directed to report that matter to the Court, and the Court could then deal with the matter again and from a new standpoint, except that the shares have already been declared, and that declaration cannot be interfered with. If it can be shown that the price which may be obtained for these premises has not been increased by the amount of the present value of the improvements, or by any amount in respect of the improvements, then the total received will have to be divided according to the shares already declared. If, on the other hand, it can be shown that the total price to be received has been enhanced by the money expended upon the improvements, then that sum must first be

deducted, before the value of the premises so far as the other parties are concerned, can be ascertained. I agree with the contention of the defendant, that the questions whether such improvements were made at all, as to their present value, and as to whether any agreement was come to between the parties, or whether the defendants acquiesced in the making of such improvements in such a way that they are bound by acquiescence, are all points which ought to be decided in the first place by the Court, and ought not to be referred to the commissioner, or to any officer of the Court to ascertain.

5. Before therefore I can finally deal with this matter, I must hear, if it be necessary, evidence on these points. This motion therefore will be adjourned to Wednesday fortnight to hear this evidence, unless the parties can agree about these facts, in which case no further inquiry may be necessary, and the case may be mentioned to me again. The costs referred to in the plaint are clearly costs of the commission and are provided for in the preliminary decree.