

(1981) 12 CAL CK 0016

Calcutta High Court

Case No: A.O.D. No. 241 of 1971

Siddheswari Roy and Others

APPELLANT

Vs

Probodh Chandra Roy

RESPONDENT

Date of Decision: Dec. 7, 1981**Citation:** 86 CWN 343**Hon'ble Judges:** Sharma, J; Chittatosh Mookerjee, J**Bench:** Division Bench**Advocate:** Sudhis Das Gupta and Anath Nath Mondal, for the Appellant; Hirendra Chunder Ghosh, A.K. Chakrabarti and Sudhansu Kumar Hazra, for the Respondent

Judgement

Chittatosh Mookerjee, J.

This appeal, at the instance of the plaintiffs is directed against the final decree for partition of "Ka" "kha" "Uma" and "Cha" schedules of the plaint of the said suit which was instituted on 28th August, 1939. On 30th January, 1953 a Division Bench of this Court dismissed the appeal preferred by Probodh Chandra Roy, the predecessor-in-interest of the respondent No. 1 series against the preliminary decree for partition of the suit properties passed by the trial court subject to certain clarifications as regards the direction about rendering accounts. The Division Bench, inter-alia, directed that a Commissioner would be appointed on the plaintiff's application and the defendant No. I would be liable to account for what he got in and not what he ought to have got with greater skill and diligence in respect of the family properties as they stood on the date of the partition.

2. We understand that at the date of passing of the judgment and decree complained of in this appeal, the words of the Accounts Commissioner appointed by the trial court had not been completed. Thus, without waiting for finalisation of accounts matter, the trial court has passed the decree complained of, inter alia, for division by metes and bounds of the aforesaid items of suit properties.

3. Mr. Dasgupta, learned advocate for the plaintiff-appellants, has not disputed that in appropriate cases the court is competent to pass more than one decree in a suit for partition. The preliminary decree passed in the present partition suit would have to be worked out, inter-alia, by division among the parties" the immovable properties by metes and bounds and also by taking accounts and, thereafter, passing a final decree. But in the interest of justice and in order to shorten the course of litigation in appropriate cases, the court may make a departure from the ordinary practice of passing one composite final decree for partition by metes and bounds and for accounts. The court may draw up a final decree making allotments of the immovable properties according to shares declared by Preliminary decree and at the same time protect the party or parties who may hereinafter obtain a final decree in the accounts matter by creating charges upon the allotted share or shares of the party or parties liable under the preliminary decree to render accounts. The instant partition suit Was instituted nearly 43 (forty three) years ago and, therefore, both justice and equity demand that the immovable properties of the parties be divided by metes and bounds without waiting for the finalisation of the decree for accounts. In fact, none of the parties are likely to suffer any prejudice or inconvenience by reason of passing such a decree for partition of the "Ka", "Kha." and "Uma" and "Cha" schedules properties. In case the properties allotted in the respective shares of the parties be charges for securing decree, if any, which may be hereinafter passed after accounting between the parties are fully completed, none of the parties are likely to be prejudiced. Any other course adopted is likely to postpone the drawing up of the final decree for partition of the. aforesaid schedules of properties for an indefinite period of time. We find no reason to deprive the parties from enjoying their separate allotments of the immovable properties according to their shares declared by the preliminary decree.

4. The decree dated the 8th April, 1970 is the subject-matter of appeal and we do not therefore, propose to express any opinion with regard to the accountability of the parties in respect of the income and other usufructs, if any, of the suit properties. Needless to say, the same would be governed by the directions contained in the preliminary decree passed in the suit and as modified in appeal.

5. The learned advocates for both parties have not seriously disputed that incase the final decree is drawn up in the manner directed by the court below, the court would be fully within its Jurisdiction to make such allotments subject to the charge in the manner indicated hereinafter-

6. As we do not propose to further defer the drawing up of the final partition decree in respect of "Ka" "Kha" "Uma" and "Cha" schedule-properties, we do not entertain the application of the plaintiff appellants for appointment of Receiver. But in the interest of justice we propose to restrain the parties from inducting any tenant in the suit properties until delivery of possession of the respective allotments are made to the parties in terms of the final decree of the trial court dated the 8th April, 1970.

7. We accordingly uphold the judgment and the decree of the trial court subject to the modification that the properties allotted in the respective shares of the parties will remain charged for payment of moneys which may be hereinafter found due from the said party or parties as a result of the decree for accounts, if any, which might be hereinafter passed by the court below. We also restrain all the parties from inducting any new tenant in the suit properties till delivery of possession of the respective allotments to the parties In terms of the final decree passed by the court below. We direct the trial court to expedite the works for taking accounts interms of the preliminary decree. We further modify the final decree passed by the court below by directing that the defendant No. 1 series will be given, in terms of the Commissioners report, three years" time from this day to - pay the owelty money in terms of paragraph (4) of the report of the Partition Commissioner. Until such payment the allotment of the defendant No. 1 series shall remain charged for the payment of the said owelty money. The delivery of the respective allotments, in terms of the final decree, shall be made as early as possible and all parties would be entitled to enforce the said decree in accordance with law.

8. The applications are also disposed of.

9. There will be no order as to costs.

10. Let the records be sent down expeditiously.

Sharma, J.

I agree