

CALCUTTA HIGH COURT

Satya Narayan Chakravarty

Vs

Biswanath Paul

(Laik,J.)

17.09.1968

JUDGEMENT

Laik,J.

(1 .) THE Single and governing question raised in this appeal is whether or not an application under Section 4 of the Partition Act (Act IV of 1893) will lie after the final decree is passed but before the stranger takes possession of his allotted share by his execution of the said decree. A two storeyed house including other bastu plots belonged to the undivided family of the Defendant No.1 transferred his eight annas share to the plaintiff-respondent No. 1 herein, who is not a member of the said undivided family. The stranger transferee sued for partition in 1953. The suit was decreed finally in July, 1956. The said decree was drawn up on 4th of September, 1957. The defendant-appellant, being the member of the said undivided family and being a share-holder, under took to buy the share of the transferee. He filed an application on March 6, 1958 under the provisions of Section 4 of the Partition Act when the said decree was pending in execution before the Second Court of the Munsif at Hooghly. Two objections were taken by the respondent, purchaser in the trial Court. First, the application under Section 4 of the Act could not be entertained after the suit was decreed finally; Second, the applicant having become a co-sharer after the decree was passed, is not entitled to apply. The learned Munsif rejecting both the objections, allowed the application under Section 4 by recording the order, as usual in the suit, in which the decree for partition was passed.

(2 .) THE stranger transferee that is, the plaintiff-respondent No. 1, took up an appeal. It was allowed by the learned Subordinate Judge, Additional Court, Hooghly. On evidence, he entered the following findings of facts, namely that, the applicant and the other defendants are living in the disputed dwelling house and that the plaintiff respondent No. 1 was a stranger to the family, and that the applicant became a share-holder in respect of the said house during the pendency of the partition suit. THE Court of appeal below, therefore, concluded that all the conditions necessary for the application of Section 4 of the Partition Act were fulfilled but the judgment further found that such an application must be filed during the pendency of the suit, which ceases

to be pending, as soon as a final decree is drawn up by the Court. He therefore held that the application under Section 4 was not maintainable at that stage. The instant Second Appeal by the defendant is against the said order. ;