

Present:
Mr. Justice Quazi Reza-Ul Hoque
And
Mr. Justice J.N. Deb Choudhury.

First Appeal 218 of 2014.

Md. Mosaraf Hossain.

.....Appellant.

Delowara Begum and others

..... Respondents.

Mr. Mohammad Eunos, Advocate

.....For the Appellant.

Mr. Taposh Kumar Dutta, advocate

..... For the Respondent Nos. 12-18.

Order dated: 31st January, 2016.

This is an application filed by the respondent Nos. 12-18 for returning the memorandum of the instant First Appeal for the purpose of presenting the same before the appropriate court on the ground that the entire value of the subject matter of the partition suit is Tk. 80,00000.00, but, value of the plaintiff's share as described is Tk. 5,00000.00. Admittedly, this is a suit for partition where the plaintiff claimed her share from the property as mentioned in the schedule of the plaint.

Mr. Taposh Kumar Dutta, the learned Advocate appearing for the respondent Nos. 12-18 submits that since value of the plaintiff's share is Tk. 5,00000.00, so the instant appeal should have to be filed before the learned District Judge and accordingly prays for returning the memorandum of appeal for filing the same before the appropriate court.

He relied upon a decision of the case of Khayertullah Vs Kamalakanta reported in 12 DLR 228.

On the other hand Mr. Mohammad Eunos, the learned Advocate on behalf of the appellant, opposes the application and submits that in a suit for partition the value of the entire suit will be the value of the suit for the purpose of pecuniary jurisdiction of the court and according prays for rejecting the application for returning the memorandum of appeal.

It is established that in suit for partition the value of the whole property which determines the jurisdiction of the court and not the value of the plaintiff's share only. As in such a suit the Court has to deal with the entire property. This view has been taken in the case of Mst. Dura Deo and Ors. Vs. Smt. Pirobati Dei and Ors. reported in AIR 1977 Ori 85, in the case of Rajani Kanta Bag Vs. Raja Bala Dasi and Ors. reported in AIR 1925 Cal 320 and in the case of Kirty Churn Mitter Vs. Aunath Nath Deb, reported in ILR 8 Cal 757. The case reported in 12 DLR 228 is distinguishable.

In view of the settle principle we are of the view that the entire property of the partition suit will be the value, for the purpose of pecuniary jurisdiction of the court. As we already mention that the entire value of the subject matter is Tk. 80,00000.00, as mention in the plaint

and in the decree. So the instant First Appeal has rightly been filed before this Court. Accordingly the application for returning the memorandum appeal is hereby rejected.

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(Quazi Reza-Ul Hoque, J)

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(J. N. Deb Choudhury, J)