IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

S.A. 10 of 2023
CAN 1 of 2015

BIPLAB BOSE
VS.
MRITUNJOY BOSE & ORS.

For the Appellant	: Mr. Rupak Ghosh, Adv. Ms. Sanjukta Gupta, Adv. Mr. Anujit Mukerjee, Adv.
For the Respondent No. 1	: Mr. Shankar Bhattacharyya, Adv. Ms. Sudeshna Basu Thakur, Adv.
Hearing concluded on	: 10th August, 2023
Judgement on	: 4th October, 2023

Siddhartha Roy Chowdhury, J.:

1. This second appeal challenges the judgement passed by learned Additional District Judge, 16th Court, Alipore, South 24 Parganas in Title Appeal No. 117 of 2012 thereby affirming the judgement and decree passed by learned Civil Judge (Senior Division) 9th Court, Alipore in Title Suit No. 66 of 2011.

2. For the sake of convenience the parties will be referred to as they were arrayed before the learned Trial Court.

3. Briefly stated, the plaintiff filed a suit for partition in respect of suit property stating, *inter alia,* that Bibhuti Bhusan Bose, the original owner of the property in suit is the grandfather of the parties to the proceeding. During his lifetime Bibhuti Bhusan Bose executed a Will on 19th June,

1957 by which he bequeathed his property to his wife Uma Rani Bose with further direction that if Uma Rani Bose during her lifetime kept the property with her, after the demise of Uma Rani 50% of the property would go to the plaintiff and remaining 50% of the property would go to Bimal Kanti Bose and Niva Rani Bose who are the son and daughter-in-law of Bibhuti Bhusan Bose.

4. The said Will of Bibhuti Bhusan was probated by competent Court of law in Probate Case No. 237 of 1977. However, during the said probate proceeding Uma Rani Bose died intested and as directed in the Will 50% of the property bequeathed by Bibhuti Bhusan Bose was given to the plaintiff and remaining 50% was given to his parents.

5. After demise of parents, the plaintiff, along with his brothers and sisters stepped into the shoes of their parents and acquired the 50% share in the suit property jointly by way of inheritance. Having felt difficulty in joint possession of the property, the plaintiff filed the suit for partition seeking declaration as to his 60% share in the suit property the share of defendants to the extent of 10% each and for final decree in terms of preliminary decree.

6. The defendants contested the suit by filing separate written statement denying all material allegations made in the plaint. The defendant no. 1 in his written statement admitted the contention of the plaintiff made in paragraph 1. It is contended by the plaintiff :-

> "1) All that premises No. 60/8, Maharaja Ragore Road, P.S. Jadavpur, Ward No. 92, Kolkata-700031, District South 24 Parganas Land measuring 2 Cottahs 9 Chittaks 30 Sq. ft. more or less together with structure standing thereon purchased by

> Bibhuti Bhusan Bose during his life time and thereafter he renovated and converted one storied pucca building on the said plot of land by his own fund and had been living in the said premises with his family members as an absolute owner and said Bibhuti Bhusan Bose, the grandfather of the plaintiff and the defendants, died on 20.10.1971"

In answer to that defendant no. 1 says :-

> "That the statements made in para no. 1 of the plaint are admitted by the Defendant. It is a fact that Bibhuti Bhusan Bose was the owner of the property comprising in the premises no. 60/8, Maharaja Tagore Road, Police Station- Jadavpur, Kolkata-700 031, in Ward no. 92."

But the defendant denied the claim of the plaintiff that he has acquired 60% of share in the suit property. Defendant no. 1 expressed his ignorance about the factum of execution of Will by his grandfather Bibhuti Bhusan Bose. According to defendant the property should be partitioned in equal share amongst the plaintiff and defendants.

7. Learned Trial Court after considering the evidence on record was pleased to dismiss the suit on the ground that the plaintiff failed to produce any document as to the ownership of the property, probate granted to the last Will of Bibhuti Bhusan Bose is not a document of title and title cannot be conferred on the basis of admission. Aggrieved plaintiff made an unsuccessful attempt to get the judgement of learned Trial Court reversed by preferring Title Appeal No. 117 of 2012. Learned First Appellate Court accepted the view of learned Trial Court and was pleased to dismiss the appeal.

8. The second appeal is admitted on the following question of law :-

1. Whether the learned judges in the courts below, substantially, erred in law in dismissing the suit for partition due to non-availability of the original document of title showing acquisition of the property-in-suit by the grandfather of the parties, namely, Bibhuti Bhusan Bose, when the parties did not raise such question and the learned judges failed to appreciate that in view of provisions of Section 58 of the Indian Evidence Act, 1972 facts admitted need not be proved?
2. Whether the learned judges in the courts below, substantially, erred in law in not recognizing the right of the plaintiff by virtue of the probated will inasmuch as once the probate is obtained, legatees under the will are entitled to assert their right on the strength of such probate as the order of the probate court is a judgment in rem and binding on all concerned?

9. Assailing the impugned judgement Mr. Rupak Ghosh, learned Counsel for the appellant submits that the plaintiff filed the suit for partition with the assertion that Bibhuti Bhusan Bose was the original owner of the property who during his lifetime executed a Will and the last Will of Bibhuti Bhusan Bose was probated and the plaintiff acquired half of the property in terms of the said Will duly, probated by the competent Court of law.

10. Exhibit-1 is the Probate certificate together with copy of Will. Drawing my attention to the pleadings of defendant no. 1 it is submitted

by Mr. Ghosh that the defendant has admitted the assertion of plaintiff as to the ownership of Bibhuti Bhusan Bose in respect of the property. The defendant even claimed 1/5 share in the suit property, originally owned by Bibhuti Bhusan Bose. Therefore, learned Trial Court had no occasion to decide the issue touching the ownership of Bibhuti Bhusan Bose in respect of the suit property. But learned Trial Court dismissed the suit on the ground that no document was produced to substantiate such claim. According to Mr. Ghosh when the parties are not at issue learned Trial Court ought to have acted upon such admission.

11. Mr. Ghosh further adverted that learned First Appellate Court committed error in endorsing the view of learned Trial Court. The document Exhibit-1 is the Probate of the Will and the judgement in the proceeding of Will is a judgement in rem which binds the entire world. To buttress his point Mr. Ghosh relies upon the judgement of Hon'ble Supreme Court in the case of ***Sri Satyendra Nath Roy (deceased) substituted by Smt. Aruna Roy & Ors. vs. Smt. Chhabi Rani Mundra*** reported in **(1996) 2 Cal LT 467** and in the case of ***Kanwarjit Singh Dhillon vs. Hardayal Singh Dhillon & Ors.*** reported in **AIR 2008 SC 306**.

12. Refuting such contention of Mr. Ghosh, Mr. Shankar Bhattacharyya, learned Counsel for the respondent no. 1 submits that though Bibhuti Bhusan Bose was the original owner of the suit property but the onus was upon the plaintiff to prove the fact but the plaintiff failed to produce any paper to substantiate such claim. Therefore, learned Trial Court as well as learned First Appellate Court had no other alternative but to dismiss the suit.

13. Section 58 of the Evidence Act, according to Mr. Bhattacharyya has no manner of application in proving the title of Bibhuti Bhusan Bose. Title of an immovable property has to be proved by tendering documentary evidence. Title cannot pass by way of admission. In support of his contention Mr. Bhattacharyya relies upon the decisions of Hon'ble Supreme Court in the case of ***AMBIKA PRASAD THAKUR & ORS. VS. RAM IQBAL RAI*** reported in **AIR 1966 SC 605**, wherein it is held :-

> *"13. On the question of title also, the plaintiffs must fail. In the plaint, the basis of their claim of title was (a) occupation of 426 bighas 18 khatas and 9 dhurs of Dubha Taufir by their ancestor Naurang Thakur as occupancy tenant and the record of his rights in the survey papers of 1892 and (b) the oral arrangement with the Dumraon Raj. The first branch of this claim is obviously incorrect. The survey papers of 1892 do not record occupancy tenancy rights of Naurang Thakur in 426 bighas 18 kathas and 9 dhurs. In the High Court, counsel for the plaintiffs conceded that in the Khasra of 1892-1893 survey the plaintiffs' branch was recorded as tenant for about 19 bighas only. The oral arrangement is not established, and the second branch of this claim also fails. The Subordinate Judge did not examine the basis of the plaintiffs claim of title. His finding in favour of the plaintiffs' title was based chiefly on (1) oral evidence, (2)depositions of witnesses in previous litigations, (3) possession, (4) an admission of the Maharaja. The oral evidence on the point is not convincing. The claim is not supported by the documentary evidence. The survey papers of 1892, 1895,1904, 1909 and 1937 do not support the plaintiffs' claim of occupancy rights in the lands in suit. The depositions of witnesses in other litigations do not carry the matter further. The deposition of defendant No. 11. Ram Dass Rai, in Suit No. 217of 1911 is of weak evidentiary value. Though admissible against him as an admission, it is not admissible against the other defendants.*

The other depositions relied upon do not satisfy the test of S. 33 of the Indian Evidence Act, and are not admissible in evidence. We have already found that the plaintiffs and their ancestors were not in possession of the disputed land since 1909. The oral evidence as to their possession before 1909 is not convincing, and we are not inclined to accept it. The documentary evidence does not support the story of their possession before 1909. With regard to the admission of the Maharaja in Suit No. 247/10 of 1913 relating to the plaintiffs' title to 244 bighas, we find that in his written statement the maharaja asserted his khas zeraiti rights and denied the alleged guzashta kastha rights of the plaintiffs' ancestors. It seems that in Bihar 'guzashta kasht' means a holding on a rent not liable to enhancement. Later, on June 10, 1913, a petition was filed on his behalf stating that the plaintiffs' ancestors were tenants in occupation of the disputed land having guzashta kasht right. The Maharaja was interested in the success of the suit, and it was necessary for him in his own interest to make this admission. The admission was made under somewhat suspicious circumstances at the end of the trial of the case when the arguments had begun. Though this petition was filed, the written statement of the Maharaja was never formally amended. In the circumstances, this admission has weak evidentiary value. In this suit the plaintiffs do not claim tenancy right either by express grant or by adverse possession. Title cannot pass by mere admission. The plaintiffs now claim title under Cl. (1) of S. 4 of Regulation XI of 1825. The evidence on the record does not establish this claim."

14. Mr. Bhattacharyya also relies upon the judgement of Hon'ble Supreme Court in the case of ***CHIRANILAL SHRILAL GOENKA (DECEASED) THROUGH LRS. VS. JASJIT SINGH & ORS.*** reported in **(1993) 2 SCC 507** wherein it is held :-

"15. In Ishwardeo Narain Singh v. Smt. Kanta Devi & Ors., AIR 1954 SC 280 this court held that the court of probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the Probate Court. Therefore the only issue in a probate proceeding relates to the genuineness and due execution of the Will and the court itself is under duty to determine it and preserve the preserve the original Will in its custody. The Succession Act is a self-contained code in so far as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the probate court. This is clearly manifested in the fascicule of the provision of Act. The probate proceedings shall be conducted by the probate court in the manner prescribed in the Act and in no other ways. The grant of probate with a copy of the Will annexed establishes conclusively as to the appointment of the executor and the valid execution of the will. Thus it does no more than establish the factum of the will and the legal character of the executor. Probate court does not decide any question, of title or of the existence of the property itself."

15. In ***Chiranilal Shrilal Goenka (supra)*** Hon'ble Apex Court held :-

"3. The grant of Probate by a Court of competent jurisdiction is in the nature of a proceeding in rem. So long as the order remains in force it is conclusive as to the due execution and validity of the will unless it is duly revoked as per law. It binds not only upon all the parties made before the Court but also upon all other persons in all proceedings arising out of the Will or claims under or connected therewith. The decision of the Probate Court,

therefore, is the judgment in rem. The probate granted by the competent court is conclusive of the validity of the Will until it is revoked and no evidence can be admitted to impeach it except in a proceeding taken for revoking the probate. [465D] Slieoparsan Singh v. Ramnandan Prasad Singh, (1916) ILR 43 Cal. 694 PC and Narbharam Jivram v. Jayvallabh Harjiwan, AIR 1933 Bom. 469, approved. [465E-F]"

16. True it is that title cannot pass by way of admission. But at the same time we should not be obvious of the fact that this is not a straight jacket formula. In *Ambika Prasad Thakur (supra)* the dispute of title arose in respect of a property where one of the parties filed the suit for recovery of possession. The evidence would suggest that there was an admission as to the title but no document was produced. The learned Trial Court held the plaintiff to be the owner of the property based on oral evidence, deposition of witnesses in previous litigations, possession and an admission. Hon'ble Apex Court in the said judgement was pleased to hold that the admission was made under somewhat suspicious circumstances at the end of the trial when the argument had begun. The fact of the case at hand, however, is different from that of the fact in *Ambika Prasad Thakur (supra)*. Therefore cannot be used as precedent.

17. Here in this case, learned Courts below concurrently observed that title cannot be considered on the basis of admission, ignoring the pleading of defendant acknowledging Bibhuti Bhusan Bose as the original owner of the suit property.

18. In this backdrop, I consider it expedient to understand what is admission and impact of admission in pleading and evidence.

19. Admission is defined under Section 17 of the Evidence Act, 1872. It says :-

> *"17. Admission defined. – An admission is a statement, oral or documentary [30][or contained in electronic form], which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned."*

20. Section 18 of the Evidence Act, 1872 says :-

> *"18. Admission by party to proceeding or his agent.—Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions. by suitor in representative character.—Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character. Statements made by—*
>
> *(1) party interested in subject-matter.—persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or*
>
> *(2) person from whom interest derived.—persons from whom the parties to the suit have derived their interest in the subject-matter of the suit, are admissions, if they are made during the continuance of the interest of the persons making the statements."*

21. Admission is a voluntary acknowledgement made by a party of existence of truth of certain facts. It is of two kinds – admission in pleading and evidentiary admission. Admission in pleading is judicial admission.

22. The legislative mandate as laid down under Section 58 of the Evidence Act which says :-

> *"Section 58 in The Indian Evidence Act, 1872*
> *58 Facts admitted need not be proved. —No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."*

23. Now let us re-visit the relevant provisions as laid down under Order VIII Rule 5,Order X ,Order XV,and Order XII Rule 6 of the Code of Civil Procedure.

24. Order VIII Rule 5 of the Code of Civil Procedure enunciates :-

> *"5. Specific denial.—1 [(1)] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability: Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission:*
> **[Provided further that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability.]*
> *[(2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.*
> *(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact*

whether the defendant could have, or has, engaged a pleader. (4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced."

25. Order X of the Code of Civil Procedure says :-

"1.Ascertainment whether allegations in pleadings are admitted or denied.—At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

[1A. Direction of the court to opt for any one mode of alternative dispute resolution.—After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.

1B. Appearance before the conciliatory forum or authority.—Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

1C. Appearance before the court consequent to the failure of efforts of conciliation.—Where a suit is referred under rule 1A, and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it.]

[2. Oral examination of party, or companion of party.—(1) At the first hearing of the suit, the Court—

(a) shall, with a view to elucidating matters in controversy in the suit examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied.

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.]"

26. Order XV of the Code of Civil Procedure says :-

***1. Parties not at issue**.—*

(1) Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment. 2. One of several defendants not at issue.

2 [(1) Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

(2) Whenever a judgment is pronounced under this rule, decree shall be drawn up in accordance with such judgment and the decree shall bear the date on which the judgment was pronounced.

3. Parties at issue.—(1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence that the parties can at once adduce is required upon such of the issues as may be sufficient

for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit: Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

4. Failure to produce evidence.—Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues."

27. Order XII (6) of the Code of Civil Procedure enunciates :-

*"6. **Judgment on admissions**.—*

(1) Where admissions of fact have been made either in the pleading or otherwise; whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question-between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

28. The provisions as aforesaid demonstrate that judgement can be passed even on admission. If at the time of first hearing of the suit under Order X of the Civil Procedure Code, it is found that parties are not at issue judgement can be pronounced under Order XV Rule 1 of the Code of Civil Procedure. Order XII Rule 6 of the Code of Civil Procedure is other prescribed procedure to pronounce judgement on admission. If these provisions are followed, the proceeding in suit shall be short-lived.

29. Here the defendant in the written statement not only admitted the contention of the plaintiff in paragraph 1 of the plaint as to the ownership of Bibhuti Bhusan Bose but also claimed 1/5th share over the property owned by their grandfather Bibhuti Bhusan Bose stating, *inter alia,* that he was unaware of any Will. Therefore, the judgement pronounced in *Ambika Prasad Thakur (supra)* is of no help to the defendants.

30. Judgement pronounced in a Probate proceeding is a judgement in rem .Section 41 of the Evidence Act, 1872 enunciates :-

> *"41. Relevancy of certain judgments in probate, etc., jurisdiction.—A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant. Such judgment, order or decree is conclusive proof— that any legal character, which it confers accrued at the time when such judgment, order or decree came into operation; that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, 1[order*

or decree] declares it to have accrued to that person; 3[order or decree] declares it to have accrued to that person;" that any legal character which it takes away from any such person ceased at the time from which such judgment, 1[order or decree] declared that it had ceased or should cease; 3[order or decree] declared that it had ceased or should cease;" and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, 1[order or decree] declares that it had been or should be his property. 3[order or decree] declares that it had been or should be his property."

31. Probate was granted in the year 1991 and there was no proceeding for its revocation. Executor of the Will was the daughter of the testator and there is every reason to presume that she has discharged her obligation by distributing the property among the legaties, in accordance with the pious desire of the testator. Thus the plaintiff appears to have acquired the property by way of testamentary succession. The document, Exhibit-7 is lending support to this fact as the plaintiff has got his name mutated as assessee in respect of the property in suit.

32. In ***NAGINDAS RAMDAS VS. DALPATRAM ICHHARAM & ORS.*** reported in **AIR 1974 SC 471** Hon'ble Apex Court held :-

"Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties On the other hand, evidentiary admissions which are receivable at the trial

as evidence, are by themselves, not conclusive. They can be shown to be wrong."

33. Learned Courts below failed to appreciate this provision of law relating to admission and consequence thereof. Here in this case, parties have been claiming right ,title and interest over the property originally owned by their grandfather Bibhuti Bhusn Ghosh ,the only dispute is the extent of share of the parties in the property. Learned Courts below could not have dismissed the suit on the ground that the ownership of Bibhuti Bhusan Bose was not established by document.

34. Therefore, in my humble opinion, learned First Appellate Court committed error in dismissing the appeal and thereby affirming the judgement of learned Trial Court. The impugned judgement, therefore, should not be allowed to remain in force. Consequently, the appeal succeeds. The judgement impugned is set aside. The judgement passed by learned Trial Court consequently is also set aside. The suit stands decreed in the preliminary form as aforesaid.

35. Consequent upon the grant of probate by the competent Court of law, the plaintiff has acquired ½ share in the suit property by way of testamentary succession and also acquired 1/5th of the remaining half share from his parents by way of inheritance and the defendants have acquired 1/5th of the ½ share each by way of inheritance from their parents or in other words plaintiff acquired total 60% share in the suit property and the defendants jointly have acquired 40%.

36. The parties are directed to get the property amicably partitioned by metes and bounds, maintaining their respective possession as far as practicable within 2 months, failing which the parties will at liberty to

approach the learned Trial Court to appoint Pleader Commissioner or an expert having knowledge in survey, in the panel of the Court, to effect partition by metes and bounds in terms of the preliminary decree and to draw final decree. Consequently, the appeal is allowed. The judgement passed both in Title Suit No. 66 of 2011 and Title Appeal No. 117 of 2012 are set aside. Pending application is also stands disposed of.

37. The department is directed to draw up decree within 15 days from the date and send down the lower Court record along with copy of judgement to the learned Trial Court.

38. Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

39. Every litigant has the right to have justice expeditiously. Trial Courts, adjudicating civil dispute, therefore, should remain alive to the procedures as laid down in the Code of Civil Procedure, and use the procedural law as effective tools to secure speedy justice. Provision of Order X of the Code of Civil Procedure is one such basic and effective avenue to tread upon, to secure the goal for dispensation of justice expeditiously, which must be followed scrupulously and in appropriate cases trial court should invoke the provision of Order XV or Order XII Rule 6 of the Code of Civil Procedure to shorten the lifespan of litigation.

40. Learned Registrar General is directed to circulate the copy of the judgement to all the members of the District Judiciary, for information and compliance.

(SIDDHARTHA ROY CHOWDHURY, J.)