

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
RFA. No.04 of 2022

Sri Arunodoy Das & Another

.....Appellants

V_E_R_S_U_S

Smti. Anjali Das & Others

.....Respondents

For Appellant(s)	:	Mr. D. R. Chowdhury, Sr. Advocate. Mr. D. Deb, Advocate.
For Respondent(s)	:	Mr. H. K. Bhowmik, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD
_O_R_D_E_R_

27/04/2023

Heard Mr. D. R. Chowdhury, learned senior counsel assisted by Mr. D. Deb, learned counsel appearing for the appellants. Also heard Mr. H. K. Bhowmik, learned counsel appearing for the respondents.

[2] This appeal has been filed under Section-97 of the CPC against the final order dated 01.02.2022 passed in partition suit vide No. T.S. (P) 41 of 2014 by the learned Civil Judge, Senior Division, Court No.4, West Tripura, Agartala basing on preliminary decree dated 15.11.2017 and the report of Survey Commissioner dated 19.02.2020.

[3] The case, in brief, is that the subject matter of the partition in this suit is a landed property wherein one Tin Ghar and one Ghar are in existence as per the Khatian but at present the suit land there are two tin ghars and one ghar and the suit land is situated at old Agartala near Chaturdash Debata Bari under Mouja and Tahasil Uttar Champamura, revenue circle Jirania having Touji No. 1352 appertaining to Khatian No. 76 corresponding to sabek plot No. 1969 / 5440, Hal plot No. 4562 bastu land measuring 24 satak. Originally the suit land belonged to one Chandra Mohan Das, the father of the plaintiff, the respondent herein and the defendants, the appellants herein and after his death the land as

inherited by the plaintiff and the defendants along with the mother namely Smt.Puspa Rani Das and accordingly their names were recorded in the khatian No. 76 by showing their respectful shares of the total suit land and so after the death of Chandra Mohan Das the land became under the Title and the ownership of the present plaintiff and the defendants along with Smt. Puspa Rani Das.

[4] As asserted by the plaintiff in the plaint that on 21.8.10 Puspa Rani Das expired and the appropriate authority issued a death certificate and after her death her share as recorded in Khatian No. 76 became vested under the ownership of the other sharers i.e. the plaintiff and the defendants. At present the entitlement of the land is to the plaintiff and all the defendants. The plaintiff is the full blooded married sister of the defendants and on the other way, the defendants are the full blooded brother of the present plaintiff. After the marriage, the plaintiff is staying in her in-laws house and at no point of time either verbally or in writing or the communication any paper was prepared to forgo her right, title interest and the possession over the shares of the land of the suit property.

[5] Practically the defendant No.4 is staying at Dhaleswar and the defendant Nos. 2 and 3 are now staying in the suit premises and the defendant No.1 has started a construction in the suit premises without any consent or without any amicable partition of the suit land amongst the co-sharers. The plaintiff has no knowledge whether other co-sharers have given the consent for the same but in no point of time, the plaintiff was taken into confident for the consent or any amicable settlement of the suit land by providing her share and thus the plaintiff is entitled to get share of the suit land, which would be one fifth of the total land. For the long time plaintiff has been pursuing her legal claim to the defendants but the defendants are taking different pleas at different times and are not interested to give any share to the plaintiff and their only target is to deprive the plaintiff from her legal claim.

[6] The learned Court below after hearing the parties and having observed the material evidence on record has observed as under:

“In view of the above discussion and decision it is hereby ordered that the suit for partition filed by the plaintiff is decreed on contest without cost.

The plaintiff and the defendants are entitled to get 1/5th share each of the suit property as described in the schedule of the plaint.

So, accordingly the defendants are directed to make partition of the suit property as per quantum of the share portion of the plaintiff and between themselves and as per decree passed by this court within two months from today. Otherwise, the plaintiff will have the liberty to get their share of landed property after partition by a survey knowing commissioner in due course of time.

The preliminary decree be prepared accordingly.

With the aforesaid observation the present case is decreed on contest without cost.

Make necessary entry in the concerned TR.”

[7] Mr. D. R. Chowdhury, learned senior counsel assisted by Mr. D. Deb, learned counsel appearing for the appellants has submitted that the judgment and decree dated 01.02.2022 accepting the report of the Survey Commissioner dated 19.02.2020 without proper appreciation on the objection of the defendant Nos.1 & 4 appellant and in passing the final decree of partition is bad in law and not warranted by the facts and circumstances of the case. He has further submitted that the Court below committed wrong and illegalities in appreciating the report of the Survey commissioner wherein, the shares of the parties have not been properly ascertained by proper assessment of the value of the respective shares of the parties and thereby, the final decree passed by the learned Court below is not metes and bounds as per the equal shares of the parties as stated in the preliminary decree.

[8] It has been further contended that the learned Court below in accepting the report of the Survey Commissioner did not look into the way of allotment of shares to the parties even without keeping the possession of the parties as construction of the buildings and huts in their respective allotted

portions causing demolition of the buildings of the defendants No.1 and 4 where the allotted shares of the plaintiff-respondent and the other defendant No.3 as have been provided by the Survey commissioner not only of much more area and the much more value and without any damage of huts and buildings within their allotted portions which is not according to the preliminary decree of partition by metes and bounds and cannot be legally considered as legal.

[9] In making partition and in ascertainment of the shares of the parties the Survey Commissioner provided two passages/pathway one in the northern side of the allotted portion of the land of the defendant No.4 and another in the Southern side of the portion of the land allotted to the defendant No.1 one measuring 10ft in breadth and 80 ft in length and another 6 ft in breadth and 80 ft in length by which the total land measuring 16 ft x 80 ft. of land i.e. 1 ½ gandas of the land have been misused whether if only one pathway would be made in the middle of the land allotted to the defendant No.1 and defendant No.4 with the space measuring 10 ft breadth x 80 ft in length then more than 3 kara i.e. below 1 ganda of land which could be distributed in the share of the defendant No.1 and 4 even though the value of the shares of the land allotted to the defendant No.1 and 4 cannot be said as equal with the allotted shares of land of the plaintiff-respondents.

[10] In view of above submission advanced by the learned senior counsel appearing for the appellants, this Court is of the view that they have objection over the report of the Survey Commissioner. But this Court after having observed the Survey Commissioner report has noticed that the defendant JD No.2 and 4 were present during field working. It is crystal clear that the partition was made in presence of both the parties and had any objection of anybody then it would surely be raised before at the spot while field work was going on.

[11] In the report, it has also been mentioned that the entire partition was made according to the choice of the parties and since there were some dwelling huts over the suit land hence, the partition was made without disturbing the possession of the existing shareholders considering the valuation of the land. Furthermore, the Survey Commissioner's report speaks the fact that the suit land was demarcated to the best of the ability of the skill and judgment equalizing the shares considering the actual position of the suit land particularly to the fact where huts and constructions are thereon and all the share holders duly consented to partition the land without disturbing their peaceful possession as it was before. Hence, it will not be prudent to accept the objection raised only by the defendant JD No.4 causing inconvenience to the other shareholders.

[12] It has been observed from the records that the final decree has been prepared in accordance with the preliminary decree considering the Survey Commissioner Report. Thus, in view of above analysis, this Court is of the opinion that if the learned Court below passes a fresh decree by extracted the Survey Commissioner's report in its order and re-issues a fresh decree; this issue can easily be resolved. Thus, the same is ordered.

[13] In the light of the above, the present appeal stands disposed of to the extent as indicated above. Draw the decree accordingly. Send down the LCRs forthwith. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE