

**HIGH COURT OF TRIPURA
AGARTALA
RSA 41/2022**

Sri Ashish Paul

----Appellant(s)

Versus

Smt. Sikha Pal and others

----Respondent(s)

For the Appellant(s) : Mr. DK Daschoudhury, Advocate

For the Respondent(s) : Mr. HK Bhowmik, Advocate

HON'BLE MR. JUSTICE ARINDAM LODH
Order

06/01/2023

Heard Mr. DK Daschoudhury, learned counsel appearing for the defendant-appellant. Also heard Mr. HK Bhowmik, learned counsel appearing for the plaintiff-respondents.

2. This is a second appeal filed under Section 100 of the CPC.
3. Mr. DK Daschoudhury, learned counsel appearing for the appellant has suggested the following substantial questions of law:

- “(i)Whether in a suit for partition of immovable property determining the share of the parties only in a compromise decree is a preliminary decree or a final decree?**
- (ii) Whether the preliminary decree determining the share of the parties only in partition suit is capable of execution?**
- (iii)Whether a survey Commissioner was right in doing the partition of suit properties in absence of one of the sharers having 50% share arbitrarily without obtaining prior permission of the Executing Court?**
- (iv)Whether the findings of the learned Courts below suffer from any perversity?**
- (iv)Any other substantial question of law as may be formulated during hearing?”**

4. Shorn of unnecessary details, the relevant facts may be stated as under:-

In a partition suit, a compromise decree was passed in favour of both the appellant and the respondent. It is submitted that both the appellant and

the respondent are full blooded brother and sister. On the basis of a solenama filed by the parties to the *lis*, the learned court had passed the decree. That decree was accepted by the parties to the suit. Thereafter, some disputes cropped up between them. Learned court had appointed a Survey Commissioner to demarcate the suit property by metes and bounds. Accordingly, Survey Commissioner submitted its report and the learned court accepted the report and partitioned the suit property. In that way, both the parties were satisfied with their respective title and possession over the suit property.

The respondent herein also have applied for mutation and on verification and following the process of law mutation was granted in favour of her which had fallen in her share under the decree. Thereafter, the possession of the respondent was again disturbed and she was evicted from the portion under her title and possession. This had compelled the respondent to file a suit for declaration of title and confirmation of possession.

The appellant had participated and contested the said suit by filing written statement and also had adduced evidences. On consideration of the evidences and materials on record, the learned trial court decreed the suit in favour of the respondent who was the plaintiff in the original suit.

The present appellant before this court had preferred first appeal before the learned District Judge, Gomati Judicial District. The first appeal was decided by the learned Additional District Judge, Gomati Judicial

District. The decree was confirmed with a modification that the said decree will not be applicable to the tenants. Against the judgment and decree passed by the learned first appellate court as well as the trial court, the appellant/defendant has preferred the second appeal before this court.

5. Mr. Daschoudhury, learned counsel for the appellant has submitted that a compromise decree is a preliminary decree and not a final decree. As such, execution proceeding on the basis of said preliminary decree was bad in law. In favour of this submission, Mr. Daschoudhury, learned counsel has placed reliance upon a decision of the Hon'ble Supreme court of India in *Shankar Balwant Lokhande (dead) by Irs. Vs. Chandrakant Shankar Lokhande and another*, reported in (1995) 3 SCC 413.

6. I have perused the judgment. The fact of the present case is quite different from the facts of the case cited by Mr. Daschoudhury, learned counsel for the appellant because of the following reasons:

(i) In the former partition suit the compromise decree became the final decree. Both the appellant and the respondent had accepted the compromise decree passed by the learned courts on the basis of a solenama which was made part of the decree. Both the parties accepted the compromise decree and the suit property was partitioned by metes and bounds. The matter was closed there. The appellant never agitated his grievance against the compromise decree on the basis of which partition was carried out by metes and bounds.

(ii) The appellant after accepting the compromise decree and demarcation of the suit property again started disturbing the peaceful possession of the respondent compelling her to institute a suit for

declaration of right, title and interest and for perpetual injunction and also eviction of the tenants from the suit property.

iii) The appellant has not agitated the plea that whether the partition was legally carried out on the basis of the compromise decree. The appellant has not agitated this plea neither before the learned trial court nor before the learned first appellate court.

7. In the subsequent suit i.e. the present suit, the learned trial court decreed in favour of the plaintiff-respondent herein. Being aggrieved, the appellant had preferred first appeal, as stated earlier. The said first appeal was dismissed by the learned first appellate court with the modification that the decree passed by the learned trial court would not be applicable to the tenants. The appellant has not been affected by such modification. The principal question relates to the suit property.

8. The substantial question of law raised by the appellant in the present second appeal is that whether the compromise decree passed in the earlier round of litigation under which the partition was carried out by the present appellant and the respondent could be accepted for the purpose of partition of the suit land.

9. Both the courts below held that the plaintiff-respondent was illegally interfered with her peaceful possession over the suit property on consideration of the documents and materials and evidences on record, which also are not disputed by the appellant.

10. It is clear from the above enumerated facts that the appellant has not challenged the decree passed in the earlier round of litigation. As such, he is

estopped to take the plea as to whether the compromise decree passed in the earlier decree is a final decree or a preliminary decree.

11. In the light of above discussion, I find no substantial question of law. As such, the present second appeal does not deserve to be admitted, and accordingly, it is dismissed at the stage of admission itself.

JUDGE

Saikat