

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.56 of 2023

Smt. Susmita Sarkar

..... Petitioner(s);

Versus

Sri Nupur Sarkar & others

.....Respondent(s)

For Petitioner(s) : Mr. D.C. Roy, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

23/11/2023

The Title Suit (Partition) No.10/2016 between the parties was decided by judgment dated 31.07.2019 and preliminary decree was prepared on 01.08.2019. Thereafter, on the basis of the report of the Survey Commissioner, the final decree was prepared on 31.01.2020. Petitioner, who was the plaintiff, sought appointment of a fresh Survey Commissioner and correction of the final decree by filing a petition under Order 26, Rule 9 & 10 of the CPC and another petition under Section 152 of the CPC read with Section 151 of the CPC [Annexure-A & Annexure-B to the instant petition].

The learned Trial Court however, after considering the case of the petitioner/plaintiff, found no substance in the application filed by the petitioner under Order 26, Rule 9 & 10 of the CPC and also under Section 151 & 152 of the CPC by holding as under :

“In the instant case, the subject matter of the plaintiff-petitioner is for appointment off new or afresh Survey Commissioner. Whereas the actual fact and the record on hand shows and says that, the suit has already been disposed of by way of final decree prepared and drawn by the Sr. Sheristadar of this Court and submitted, which is already sealed and signed by the presiding officer of the court.

This Court thinks it prudent that as once decreed is always decreed and the same cannot be changed under the provisions of Order 26 Rule 9 and 10 of CPC and under the provisions of section 151 and 152 of CPC. Because, the prayer of the plaintiff-petitioner is not the mistake or the error or the omission or is not a clerical or arithmetical mistake or error, but is the error or mistake or

omission of the entire report of the Survey Commissioner, which was in fact already accepted by both the parties before passing of the final decree.

So, coming at this stage and praying for appointing of new Survey Commissioner afresh and submission of the report of the Survey Commissioner and subsequently passing of another new final decree by this Court does not find any merit at all.

The plaintiff-petitioner has many option to approach before the proper forum or body for any grievances against the final decree of this Court through by way of appeal, revision or review. But this Court cannot make any appointment of new Survey Commissioner for survey of the land in question as the trial of the suit as already completed in the form of passing final decree by Order dated 13.01.2020 and final decree Order dated 31.01.2020.

Hence, finding no substance and merit, the application filed by plaintiff-petitioner in Order dated 03.02.2022 and application filed under section 151 and 152 of CPC is hereby rejected.”

Learned counsel for the petitioner however is not able to overcome the grounds of rejection recorded by the learned Trial Court as according to it, no fresh Survey Commissioner can be appointed after the final decree has been prepared on the basis of the entire report of the Survey Commissioner which was accepted by both the parties before passing of the final decree. The prayer of the petitioner is not a mistake or the error or the omission in preparation of the final decree or a clerical or arithmetical mistake or error. The learned Court also held that the petitioner has many options to approach the proper forum or body for any grievances against the final decree of the court by way of appeal, revision, etc.

Therefore, learned counsel for the petitioner, after some arguments, does not press the instant petition. However, he seeks liberty to approach the competent court in an appropriate proceeding against the final decree.

He is at liberty to do so, if permissible in law. The instant petition is dismissed as withdrawn.

(APARESH KUMAR SINGH), CJ