

HIGH COURT OF TRIPURA

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RFA. No.24 of 2022

Smti. Pranati Roy (Das) and 3 Others.

.....Appellants

_V_E_R_S_U_S_

Smti. Biva Das and 12 Others

.....Respondents

For Appellant(s) : Mrs. P. Dhar, Advocate.
For Respondent(s) : Mr. P. Chakraborty, Advocate.
Ms. S. Debnath, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

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04/10/2023

Heard Mrs. P. Dhar, learned counsel appearing for the appellants also heard Mr. P. Chakraborty, learned counsel appearing for the respondents.

[2] The present appeal has been filed under Section-96 of Civil Procedure Code, 1908 against the judgment dated 30.04.2022 and preliminary decree dated 07.05.2022 passed in T.S. (P) 25 of 2015 by the Court of the learned Civil Judge (Senior Division), Court No.2, Khowai Tripura.

[3] The facts in brief are that the plaintiffs had filed a suit for partition of joint landed property measuring 0.51 acres of their predecessor in interest Jagneswar Das who died on 28.02.1973 and the defendants No.1 to 4 in the suit were the successors of Shyamal Kanti Das (now deceased), the eldest son of Jagneshwar Das. The suit was registered as TS. (P) 25 of 2015 and the appellants herein had filed a counter claim registered as counter claim 01 of 2019 which has been dismissed for default on 29.09.2021.

[4] The appellants' claim is that the all the landed property owned by the plaintiffs and defendants (appellants) jointly were not included in the partition suit and further Shyamal Kanti Das, the predecessor of the defendants No.1 to 4 being the eldest son of Jagneshwar Das and elder brother of the plaintiffs took the charge of the family and maintained the entire suit land with his own expense and effort after the death of the original owner Jagneshwar Das. The partition suit was decreed in favour of the plaintiffs vide judgment dated 30.04.2022 and preliminary decree dated 07.05.2022 passed in T.S. (P) 25 of 2015 by the Court of learned Civil Judge, Sr. Division, Court No.2 Khowai, Tripura.

[5] The learned counsel below after hearing the parties and appreciation of the material evidence on record, the learned Court below has observed as under:

“26. In the result, the suit of the plaintiffs is decreed on contest against the defendants No. 1 and 3 and without contest against rest of the defendants. It is declared that the plaintiffs are entitled to 1/7th share each in the suit schedule land and the defendants No. 1 to 4 are jointly entitled to 1/7th share therein.

27. The parties are accordingly directed to partition the suit land amicably by metes and bounds as per the respective shares declared above within a period of 45 days. In the event of their failure, any of the parties may approach this court for drawal of final decree by appointment of partition commissioner.

28. Sheristadar is to prepare a preliminary decree accordingly and place before me for my signature within 15 days from today.

29. The record shall be consigned to the Record Room after due compliance.”

[6] Being aggrieved by and dissatisfied with the same, the appellants have preferred the present appeal before this Court for reconsideration.

[7] Mrs. P. Dhar, learned counsel appearing for the appellants has submitted that the learned Court below while passing the preliminary decree went beyond the pleadings and evidences led by the parties and held that the suit does not suffer from the defect of partial partition as the same is allowed under the Dayabhaga school of Hindu Law thereby failing to understand the consequence of partial partition of the properties of the original land holder which would result in the respondent plaintiff to continue enjoying the possession and usufructs from the other landed estate of the common predecessor-in-interest but would oust the appellant defendants from the homestead which has been the residence of the appellant No. 1 and also home and permanent address of the other appellants.

[8] The learned Court below while passing the preliminary decree failed to take into account the fact that the plaintiffs have not stated anywhere in their plaint regarding the entire land holdings of late Jagneshwar Das and Late Hiran Prava Das, wife of Late Jagneshwar Das from whom they have inherited other properties which they hold jointly as co-sharers and the specific reason and purpose for which the homestead land is solely sought to be partitioned. Rather the plaintiffs have chosen to present a case whereupon it appears that late Jagneshwar Das had left behind only the suit land and even though the appellants in their written statement have made a prayer for inclusion of the other properties

which they jointly hold in the hotchpots there was no change in the stance of the plaintiffs.

[9] The learned Court below has failed to take into account the fact that the appellants in their written statement in paragraph No. 25.2 have brought on record the entire land holdings of late Jagneshwar Das and late Hiran Prava Das and that it was the duty of the learned Court below in the partition suit where the interest of the plaintiffs and defendants being alike, to take into account all the properties in the hotchpot such as to pass a decree ensuring an equitable distribution of land among the co-sharers of the property.

[10] The learned Court below while passing the preliminary decree failed to consider the fact that the partition of a part of the landed estates jointly held by the plaintiffs and the defendants would be inequitable and unfair to some of the co-sharers thereby causing miscarriage of justice. The learned Court below while passing the preliminary decree failed to take into consideration the settled principle of law that all the joint properties are to be included in the partition suit and only properties which are not held in common by the co-sharer defendants along with the plaintiffs are to be left out.

[11] In the present suit the appellant defendants have stated in their written statement all the joint properties which they as co-sharers along with the plaintiffs have inherited from their predecessor-in-interest but, the learned Court below completely ignored the same while passing the decree for partition of the suit land as described in the plaint only.

[12] In view of above, this Court is of the opinion that the Ext. A khatian is a public document and has been admitted in evidence without any objection whatsoever from the plaintiffs' side. Further, in the written statement of the contesting defendants they specifically referred to that khatian and also had filed a copy of the same.

[13] The Suit land have relied on Khatian No, 1500 and proved the same as Ext. P/1. Similarly, the contesting defendants have relied on khatian No. 178 (Ext. D/A) in support of their claim as to joint tile and ownership of the plaintiffs and the defendants No. 1 to 4 over the 0.49 acres of land covered by that khatian standing in the name of Hiran Prava Das. If that argument is accepted the very foundation of the case of the plaintiffs will also be shaken as they also relied on

khatian in proof of title. Thus, the argument of the defence that the Ext. D/A khatian does not prove title to property cannot be appreciated. More so, the Ext. D/A is a copy of finally published khatian and carries a presumption of its correctness in terms of Section-43 of the TLR & LR Act. The plaintiffs totally failed to bring any evidence on record to rebut such presumption of correctness.

[14] Further, it is admitted fact that Hiran Prava Das was the mother of the plaintiffs and the predecessor of the defendants No. 1 to 4. It is also not in dispute that said Hiran Prava Das died on 06.03.2014 (Ref. Ext. P/2). Thus, by operation of law of succession, after death of Hiran Prava Das the land under Khatian No. 178 devolved upon the plaintiffs and the defendants No. 1 to 4 jointly. Above discussion of evidence on record makes it abundantly clear that the plaintiffs have excluded the joint property appertaining to Khatian No. 178 from this suit. Now the question that comes for consideration is whether the suit is maintainable in absence of inclusion of a part of joint property.

[15] It has been argued that the suit property has not been denied and disputed by the contesting defendants in their written statement and in view of that admission of fact nothing remains further to prove by the plaintiffs. The stand of the contesting defendants that the predecessor of the defendants No. 1 to 4 has contribution in maintaining and developing the suit land and making additional constructions is false and baseless. They also failed to adduce any evidence to support that plea. It has been specifically stated that after death of the original owner Jagneswar Das the mother of the plaintiffs maintained the suit property. The predecessor of the defendants No. 1 to 4 admittedly was serving in a bank and had been out from the suit land in connection with his job. The defendant No.1 also admitted in her cross-examination that she remained out of the suit land for most of the period in connection with her service in bank. Such evidence on record remained uncontroverted.

[16] Pleading of the parties and the arguments addressed by their learned counsels sufficiently show that there is not dispute with regard to the fact that Jagneswar Das was the original owner of the suit land and that the plaintiffs and the predecessor of the defendants No. 1 to 4 are the daughters and sons of said Jagneswar Das. There is also no dispute about death of the original owner Jagneswar Das and that the plaintiffs and the defendants No. 1 to 4 are his sole legal heirs. However, except oral evidence of the defendant No.1 no other

evidence is adduced from the contesting defendants to support their stand that their predecessor made any improvement in the suit land by using his own fund.

[17] The oral evidence of the defendant No.1 with that regard is neutralised by the statements of the P.Ws. 1 and 2 who with equal force denied the suggestions that the predecessor of the defendants No. 1 to 4 spent money from his fund for embankment of pond and renovation, extension and maintenance of home standing in the suit land. On the other hand, it is found that the mother of the parties died on 2014 and that the assertion of the plaintiffs that the suit land fetches income from rent has not been controverted. Thus, in the given facts and circumstances the plea of the defence as to contribution of the predecessor of the defendants No. 1 to 4 in improvement of the suit land does not inspire confidence.

[18] From the above admitted position of fact and the materials on record it is clear that the suit land is joint property of the plaintiffs and the defendants No. 1 to 4 where the plaintiffs have 1/7th share each and the defendants No. 1 to 4 having 1/7th share jointly. That being the position, I hold that the plaintiffs are entitled to an order of partition according to the above shares. Section-181 of the TLR & LR Act bars partition of holdings only which results in fragmentation i.e. creation of a holding of less than 0.80 standard hectare area. Section-179 defines, holding as aggregate area of land held by a person as 'riyat'. Again the term 'riyat' is defined in Section-2(s) of the TLR & LR Act as a person who owns land for purposes of agriculture. A cumulative reading of the above provisions makes it clear that such bar applies in respect of agricultural land only.

[19] It is a settled legal proposition that as a rule, relief not founded on the pleadings should not be granted. Therefore, a decision of a case cannot be based outside the pleadings of the parties. Ordinarily, the reliefs are drawn on the basis of pleadings. Even in some cases, on the basis of pleadings, the court can mould the reliefs. But the foundation of such relief must have its anchor in the pleadings. It is always the creditor who has final call in the matter, unless contrary of law and is provided otherwise by lawful agreement.

[20] In the result, the appeal stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Draw the decree accordingly and send down the LCRs thereafter.

JUDGE

A. Ghosh

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GHOSH

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Date: 2023.10.10
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