

HIGH COURT OF TRIPURA
AGARTALA
RFA 17 of 2023

1. Smti. Puspa Rani Das(Roy),
wife of late Ram Dulal Roy,
resident of Old Agartala,
P.S. Bodhjunnagar, District- West Tripura

2. Sri Partha Sarathi Roy,
son of late Ram Dulal Roy,
presently residing at Ashraya Vishi Building,
Varthur, Bangaluru

----Appellant(s)

Versus

1. Smti Maya Rani Roy (Das),
wife of late Jahar Lal Das,
daughter of late Beni Madhab Roy,
resident of Old Agartala,
P.S. Bodhjunnagar, District-West Tripura

2. Smti. Ful Malati Roy (Majumder),
wife of Sri Nityananda Majumder,
daughter of Late Beni Madhab Roy,
resident of Krishnadaspur, P.S. Gobardhanpur,
South District- South 24 Pargana, West Bengal-743371

----Respondent(s)

3. Sri Pritam Roy,
son of late Ram Dulal Roy,
resident of Old Agartala,
P.S. Bodhjunnagar,
District-West Tripura

----Proforma-Respondent(s)

For Appellant(s)	:	Mr. S. Pandit, Adv. Mr. S. Das, Adv.
For Respondent(s)	:	Mr. Samarjit Bhattacharjee, Adv.
Date of Hearing	:	28.06.2024
Date of delivery of Judgment & Order	:	04.07.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT
Judgment & Order

This is an appeal under Section 96 read with Order 41 of CPC
by the appellants against the judgment and preliminary decree dated
05.04.2022 delivered by Learned Civil Judge, Senior Division, Court

No.1, West Tripura, Agartala in connection with Case No.T.S.(P)130 of 2017.

2. Heard Mr. S. Pandit, Learned counsel appearing for the appellants as well as Mr. Samarjit Bhattacharjee, Learned counsel appearing for the respondent-plaintiffs. None appears on behalf of the proforma-respondent No.3.

3. Before proceeding with the merit of this appeal, let us discuss about the subject matter of the suit filed before the Learned Trial Court. The respondent-plaintiffs filed a partition suit before the Court of Learned Civil Judge, Senior Division, Court No.1, West Tripura, Agartala seeking partition of the suit land as mentioned in schedule of the plaint. According to the respondent-plaintiffs, one Benimadhab Roy (since dead) was the father of the respondent-plaintiffs and one Ram Dulal Roy, the predecessor of the present appellants. Said Benimadhab Roy expired in the year 1986 leaving behind two daughters i.e. the respondent-plaintiffs herein and his son Ram Dulal Roy (since dead by this time) as his only legal heirs to succeed to his property as per law for inheritance and succession. After his death, his son and daughters inherited the said property in equal share. The respondent-plaintiffs in their plaint further alleged that on 08.01.2016 they requested Ram Dulal Roy, the predecessor of the present appellants for amicable partition of the suit land which was recorded in the name of said Ram Dulal Roy but in vain. After that, the respondent-plaintiffs filed petition for correction of ROR in respect of the suit land recorded in khatian Nos.1303/1 and 1303/2. It was further alleged that tehsildar of Uttar Champamura went for field enquiry but on 26.10.2017 said Ram Dulal Roy (since dead) threatened the plaintiffs. Thereafter, they filed the partition suit as alleged. On

receipt of summons, said Ram Dulal Roy appeared and contested the same by filing written statement. In the written statement, said Ram Dulal Roy admitted that the suit land was belonging to his father and also admitted that the respondent-plaintiffs are also the legal heirs of said late Benimadhab Roy but Ram Dulal Roy questioned the maintainability of the suit and further submitted that record of right was prepared in his name on the basis of possession. So, no decree could be passed against him and finally prayed for dismissal of the suit with costs.

4. Upon the pleadings of the parties, following issues were framed by the Learned Trial Court :

- "I) Whether the suit is maintainable in its present form and nature ?**
- II) Whether there is any cause of action ?**
- III) Whether the suit is insufficiently stamped ?**
- IV) Whether the suit land is liable to be partitioned amongst the plaintiff and the defendants ?**
- V) Whether the plaintiff is entitled to a decree of cancellation of Khatian No-1303/1 and 1303/2 ?**
- VI) Whether the plaintiffs are entitled for a decree as prayed for ?**
- VII) Whether the plaintiffs are entitled for any other relief/reliefs ?"**

5. Thereafter, in the meantime the case was posted for evidence. By that time, said Ram Dulal Roy expired and his legal heirs were substituted i.e. the present appellants and the proforma-respondent and inspite of receiving summons they did not turn up before the Court and finally, on the basis of evidence on record of the respondent-plaintiffs and on perusal of the documentary evidence on record, the Learned Trial Court delivered the judgment. For the sake of convenience, I would like to mention herein below the name of witnesses of the respondent-plaintiffs and the exhibited documents :

- "1) Original Khatian No.645 of Mouja Uttar Champamura [Exbt.1],**
- 2) Computerised Khatian No.1303/2 of Mouja Uttar Champamura [Exbt.2],**
- 3) Original Khatian No.1303/1 of Mouja Uttar Champamura [Exbt.3],**
- 4) Certified copy of mutation report [Exbt.3/1],**

- 5) Certified copy of Sale deed No.I-5193, 6 Sheets [Exbt.4],
- 6) Mutation report in connection with MR 425 [Exbt.5],
- 7) Certified copy of Sale deed No.I-1253 [Exbt.6],
- 8) Certified copy of Sale deed No.I-1254 [Exbt.7],
- 9) Certified copy of Gift deed No.I-6337 [Exbt.8],
- 10) Original receipt of copy of petition filed before the DM and Collector dated 07.07.2017 in connection with MR 454 of 2017 [Exbt.9],
- 11) Caste certificate of Fulmalati Roy [Exbt.10],
- 12) Admit Card of Fulmalati Roy [Exbt.11],
- 13) Citizenship Card [Exbt.12]"

The operative portion of the judgment/order dated 05.04.2022 runs as follows:

"As a result thereof, the suit of the plaintiffs is decreed with the observation that each of the plaintiffs are entitled to one third share of the suit land and the defendants are together entitled to one third share of the suit land.

The plaintiffs are directed to submit deficit court fees.

Prepare preliminary decree accordingly and put up before me for signature within 14(fourteen) days from today after submission of deficit court fees by the plaintiffs.

The parties are at liberty to amicably partition the suit land as per the judgment passed today, failing which the plaintiff is to take steps accordingly.

Thus, this case is disposed on contest.

Pronounced in the open court."

6. In course of hearing of arguments, Mr. S. Pandit, Learned counsel appearing for the appellants submitted that the Learned Trial Court below passed an erroneous judgment as because before the Learned Trial Court, the present appellants could not contest the suit as because the proforma-respondent received summons on their behalf but he did not intimate anything to the present appellants for which they could not adduce any oral/documentary evidence in support of their defence but only during the period of survey commission, they could know that the suit was filed against their predecessor. Furthermore, the Learned Trial Court below ignoring the documentary evidence on record without affording any opportunity to the present appellants passed an erroneous judgment and furthermore, the respondent-plaintiffs never possessed the suit land at any point of time. So, Learned counsel for the appellants finally prayed for allowing this appeal by setting aside the

judgment with a further request to direct the Learned Trial Court to allow the respondent-plaintiffs to submit additional written statement and to allow them to adduce oral/documentary evidence in support of their defence.

7. On the other hand, Mr. Samarjit Bhattacharjee, Learned counsel appearing for the respondent-plaintiffs first of all submitted that the Learned Trial Court below after considering the oral/documentary evidence on record passed a reasoned judgment protecting the interest of both the rival parties of the suit. Learned counsel for the respondent-plaintiffs further submitted that from the record of the Learned Trial Court below it would reveal that the present appellants inspite of receiving summons and inspite of allowing opportunity did not appear before the Court nor adduce any oral/documentary evidence in support of their case but at the time of survey commission they appeared before the Court and raised objection.

8. Learned counsel for the respondent-plaintiffs further submitted that from the judgment of the Learned Trial Court below it is crystal clear that said Ram Dulal Roy has/had no valid document in respect of his absolute title over the suit land save and except the khatians which were also relied upon by the respondent-plaintiffs and marked as Exbts.2 & 3 which does not confer any title.

9. Finally, according to Learned counsel for the respondent-plaintiffs by the judgment there is/was no chance of prejudice of the present appellants. Now with a view to harass the respondent-plaintiffs who are also old and aged and to burden them with litigation this appeal has been filed by the present appellants without any basis. So, Learned

counsel for the respondent-plaintiffs prayed for dismissal of this appeal with costs.

10. It was further submitted said Ram Dulal Roy, the predecessor of the present appellants contested the suit by filing written statement and after his death, no step was taken by them. Even, inspite of receipt of summons from the Court, they did not bother to contest the suit. Now, with a false plea of non receipt of summons and ignorance about the fact of the case, this appeal has been filed by the appellants for which Learned counsel for the respondent-plaintiffs urged before the Court that there is no scope to interfere with the judgment of the Learned Trial Court at this stage.

11. I have heard detailed arguments of both the sides and gone through the record of the Learned Court below very carefully. After hearing both the sides, it is crystal clear that the case of the present appellants is based upon two khatians i.e. khatian Nos.1303/1 and 1303/2 which were marked as Exbts.2 & 3 at the instance of respondent-plaintiffs before the Learned Trial Court. It is an admitted position that the suit land was originally belonged to one Benimadhab Roy, there is no dispute on record in this respect. After his death, the suit land dwelled upon the respondent-plaintiffs and said Ram Dulal Roy(since dead) at present the legal heirs of said Benimadhab Roy. It is an admitted position that presently, the suit land is lying vacant. Said Ram Dulal Roy during his life time on receipt of summons from the Court appeared and filed written statement. In the written statement, said Ram Dulal Roy only took the plea that he possessed the suit land since long back and the record of rights was prepared in his name but at the time of hearing of this appeal, Learned counsel for the appellants

submitted that the present appellants and their predecessors have/had acquired right of adverse possession over the suit land but in support of exclusive title over the suit land of said Ram Dulal Roy, the present appellants save and except Exbts.2 & 3 could not show any other relevant documents to take presumption that said Ram Dulal Roy, was the exclusive lawful title holder/owner of the suit property.

12. It is on record that after the death of said Ram Dulal Roy, the appellants and the present proforma-respondent were substituted but inspite of receipt of summons, they did not appear before the Learned Trial Court nor adduced any oral/documentary evidence on record. Even, after the death of said Ram Dulal Roy also, they did not think it necessary to contest the suit. So, the story of non-receipt of summons by the present appellants or their ignorance about the suit cannot be accepted.

13. Since, at the time of hearing of argument of this case, a scope was given to the appellants' side to show any relevant documents in support of title over the suit land either by said Ram Dulal Roy or by the present appellants and the proforma-respondent but they could not produce any such documentary evidence on record before the Court. Rather, Learned counsel stressed upon Exbts.2 & 3 as already stated above.

14. Learned Court below at the time of determination of the suit has/have framed in total seven numbers of issues and ultimately decreed the suit in favour of the present respondent-plaintiffs. Further, Learned Court below in para-11 of the judgment came to the conclusion that on the basis of Exbts.2 & 3, no inference could be drawn that said

Ram Dulal Roy was the lawful owner of the suit land as the khatians does not confer any title.

15. In course of hearing of arguments, Learned counsel for the appellants drawn the attention of the Court referring one judgment of the Hon'ble Apex Court. In **Vidya Devi alias Vidyavati (dead by L.R.'s) versus Prem Prakash and Others** reported in **(1995) 4 SCC 496** wherein in paras-21 & 22 it has been observed as under :

"21. Normally, where the property is joint, co-sharers are the representatives of each another. The co-sharer who might be in possession of the joint property shall be deemed to be in possession on behalf of all the co-sharers. As such, it would be difficult to raise the plea of adverse possession by one co-sharer against the other. But if the co-sharer or the joint owner had been professing hostile title as against other co-sharers openly and to the knowledge of others joint owners, he can, provided the hostile title or possession has continued uninterruptedly for the whole period prescribed for recovery of possession, legitimately acquire title by adverse possession and can plead such title in defence to the claim for partition.

22. "Adverse possession" means hostile possession, that is, a possession which is expressly in denial of the title of the true owner. (See:/ Gaya Parshad Dikshit Vs. Nirmal Chander and another (AIR 1984 SC 930). The denial of title of the true owner is a sign of adverse possession. In Ezaz Ali Vs. Special Manager, Court of Wards (AIR 1935 PC 53), it was observed:

"The principle of law is firmly established that a person, who bases his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed."

Relying upon the same, Learned counsel for the appellants submitted that the present appellants relies upon khatian Nos.1303/1 and 1303/2 standing in the name of said Ram Dulal Roy which were marked at the instance of the respondent-plaintiffs. In addition to that, by way of his long standing possession over the suit land said Ram Dulal Roy also acquired right of adverse possession over the suit land. But the Learned Court below did not consider the same and decreed the suit ignoring the factual position. So, Learned counsel urged for setting aside the judgment of the Learned Trial Court and to direct the Trial Court to

allow the present appellants to submit additional written statement and also to adduce oral/documentary evidence on record.

16. On the other hand, Learned counsel for the respondent-plaintiffs in addition to his submission relied upon the judgment of the Hon'ble Supreme Court of India in **P. Kishore Kumar versus Vittal K. Patkar** in **Civil Appeal No.7210 of 2011 dated 20.11.2023** wherein in paras-11 to 15 it has been observed as under :

"11. It is trite law that revenue records are not documents of title.

12. This Court in Sawarni vs. Inder Kaur and Ors. : (1996) 6 SCC 223 held that mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question.

13. This was further affirmed in Balwant Singh & Ors vs. Daulat Singh (Dead) by LRs and Ors.:(1997) 7 SCC 137 wherein this Court held that mere mutation of records would not divest the owners of a land of their right, title and interest in the land.

14. In Jitendra Singh vs. State of Madhya Pradesh and Ors.:(2021) SCC Online SC 802, this Court after considering a catena of judgments, reiterated the principle of law as follows:

"6. *mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose."**

15. We may also profitably refer to the decision of this Court in Sita Ram Bhau Patil vs. Ramchandra Nago Patil (Dead) by LRs. and Ors.: (1977)2 SCC 49 wherein it was held that there exists no universal principle that whatever will appear in the record of rights will be presumed to be correct, when there exists evidence to the contrary."

17. In reference to the present context, Learned counsel for the respondent-plaintiffs further referred another decision of the Hon'ble Apex Court in **Union of India & Others versus Vasavi Cooperative Housing Society Limited & ors.** reported in **(2014) 2 SCC 269** wherein the Apex Court in paras-20 & 21 observed as under :

"20. We notice that the trial court as well as the High Court rather than examining that question in depth, as to whether the plaintiffs have succeeded in establishing their title on the scheduled suit land, went on to examine in depth the weakness of the defendants' title. The defendants relied on the entries in the GLR and their possession or repossession over the suit land to non-suit the plaintiffs. The court went on

to examine the correctness and evidentiary value of the entries in the GLR in the context of the history and scope of the Cantonment Act, 1924, the Cantonment Land Administration Rules, 1925 and tried to establish that no reliance could be placed on the GLR. The question is not whether the GLR could be accepted or not, the question is, whether the entries in the GLR by themselves may not constitute title, but the question is whether the entries made in Ext. A-3 would confer title or not on the plaintiff.

21. This Court in several judgments has held that the revenue records do not confer title. In *Corpn. of the City of Bangalore v. M. Papaiah*:(1989) 3 SCC 612 this Court held that :

"5. ... It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law."

In *Guru Amarjit Singh v. Rattan Chand*:(1993) 4 SCC 349 this Court has held that:

"2. ... that entries in the Jamabandi are not proof of title."

In *State of H.P. v. Keshav Ram*:(1996) 11 SCC 257 this Court held that:

"5. ... an entry in the revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs.""

Relying upon the same, Learned counsel for the respondent-plaintiffs submitted that on the basis of khatians there is no scope to presume that said Ram Dulal Roy had valid title over the suit land as because the khatian does not confer any title. Furthermore, Learned counsel for the respondent-plaintiffs submitted that the Learned Court below after considering all aspects rightly delivered the judgment protecting the share of all the rival parties.

18. Learned counsel for the respondent-plaintiffs thereafter referred another judgment of this High Court in **Sarada Bala Roy and Others versus Gouranga Chandra Roy and Others** in **RSA 10 of 2018 dated 25.04.2019** wherein in paras-35, 36, 44, 51, 67, 74, 80 & 95 it has been observed as under :

"35. It may be further clarified that Section 43(3) of the TLR & LR Act, 1960 only speaks about the record of right as finally published has a presumptive value unless the contrary is proved.

36. While interpreting the nature and scope of Section 43(3) of the TLR & LR Act, this Court (when it was under the Gauhati High Court) in *Parija Bibi Vs. Santi Ranjan Datta*, reported in 1995 (II) GLT 174 (decided on 12.01.1995) had held that

"Section 43(3) of the Act envisages that entry in the record of rights as finally published shall be presumed to be correct until the contrary is proved."

44. In the light of the legal positions as discussed in the preceeding paragraphs, I am also of the view that exhibit A series, B series and C series are not the documents of title.

51. The concept of joint family is common both in Mitakshara and Dayabhaga law. The difference is that in Mitakshara law the essence of a co-parcener lies in unity of ownership but in Dayabhaga School of law, the joint family exists in unity of possession. It is the unity of possession that makes them co-parceners. So long as there Page 18 of 36 is unity of possession no co-parcener in or under the Dayabhaga law can say that a particular share in the property belongs to him.

(emphasis supplied)

67. I can easily say that Lalmohan Roy styled himself as the karta of the joint family at Agartala, India as Manmohan used to reside in Bangladesh but according to me, it does not take away the ownership right of Lt. Manmohan Roy over the suit land.

74. The court put a question as to whether he has fabricated the partition document in collaboration with the parties against which the said witness has answered, "absolutely not". The preparation of the said partition deed, i.e. exhibit-7 also gets support from the deposition of PW3 when the said witness has stated categorically that "there was a Bantannama under the guidance of Nishi Kanta Roy, Amin of our village, there were separate shares of all."

80. On recapitulation of the legal position as delineated in the preceeding paragraphs it can easily be said that in absence of any document of title this Court may draw a presumption that the suit land in question was ancestral property of the plaintiff as well as the defendants.

95. According to me, the principle culled out in the above decision will not help the appellants in any manner. The above decision crystallizes the principle that when it is established that the plaintiff has been able to establish the fact of a joint family property having found the nucleus (Tripura Sundari Kapali herein) from which the suit property in question has been acquired, and when the defendant claims that it is a self-acquired property, then, burden shifts on the defendant to establish that the property was acquired without the aid of the joint family property."

Referring the same, Learned counsel further submitted that the citation as referred by the Learned counsel for the appellants rather supports the case of the respondent-plaintiffs and submitted that since the suit property was a joint property, so, if for arguments sake said Ram Dulal Roy was in possession of the suit property also in that case his apparent possession as co-sharer shall be deemed to be in possession on behalf of all the co-sharers. So, on the basis of that judgment, there is no scope to accord any relief in favour of the present appellants and finally urged for dismissal of this appeal.

19. I have perused the aforesaid citations referred by the Learned counsels. As already stated, the present appellants could not show any satisfactory document of title regarding the exclusive ownership of their predecessor over the entire suit land before the Learned Trial Court and even to this Court also at the time of hearing of argument they could not show any document of title, rather, the documents proposed to be relied upon by them are already been marked as exhibits by the respondent-plaintiffs (Exbts.2 & 3). On perusal of the same, there is no scope to take any presumption of absolute ownership over the suit land by their predecessor. So, the submission of Learned counsel for the appellants that the predecessor of the present appellants was the absolute owner of the suit land cannot be accepted as because the entry in revenue records does not confer any title over the suit property in view of the principle of law laid down by the Hon'ble Apex Court. So, the citations as referred by Learned counsel for the respondent-plaintiffs appears to be more significant and relevant for the decision of this case.

20. The Hon'ble Apex Court in **B.R. Patil versus Tulsa Y. Sawkar and Others** reported in **2022 SCC Online SC 240** wherein in paras-26 & 27 observed as under :

26. In Md. Mohammad Ali (dead) by Irs. v. Jagadish Kalita and Others : (2004) 1 SCC 271 the court inter alia held as follows:

"31. In Vidya Devi v. Prem Prakash :(1995) 4 SCC 496 this Court upon referring to a large number of decisions observed:

"27. ... It will be seen that in order that the possession of co-owner may be adverse to others, it is necessary that there should be ouster or something equivalent to it. This was also the observation of the Supreme Court in P. Lakshmi Reddy case [P. Lakshmi Reddy v. L. Lakshmi Reddy, AIR 1957 SC 314] which has since been followed in Mohd. Zainulabudeen v. Sayed Ahmed Mohideen:(1990) 1 SCC 345.

28. 'Ouster' does not mean actual driving out of the co-sharer from the property. It will, however, not be

complete unless it is coupled with all other ingredients required to constitute adverse possession. Broadly speaking, three elements are necessary for establishing the plea of ouster in the case of co-owner. They are (i) declaration of hostile animus, (ii) long and uninterrupted possession of the person pleading ouster, and (iii) exercise of right of exclusive ownership openly and to the knowledge of other co-owner. Thus, a co-owner, can under law, claim title by adverse possession against another co-owner who can, of course, file appropriate suit including suit for joint possession within time prescribed by law."

32. Yet again in *Darshan Singh v. Gujjar Singh* [(2002) 2 SCC 62] it is stated:

"It is well settled that if a co-sharer is in possession of the entire property, his possession cannot be deemed to be adverse for other co-sharers unless there has been an ouster of other co-sharers."

It has further been observed that:

"9. In our view, the correct legal position is that possession of a property belonging to several co-sharers by one co-sharer shall be deemed that he possesses the property on behalf of the other co-sharers unless there has been a clear ouster by denying the title of other co-sharers and mutation in the revenue records in the name of one co-sharer would not amount to ouster unless there is a clear declaration that title of the other co-sharers was denied."

27. The possession of a co-owner however long it may be, hardly by itself, will constitute ouster. In the case of a co-owner, it is presumed that he possesses the property on behalf of the entire body of co-owners. Even non-participation of rent and profits by itself need not amount to ouster. The proof of the ingredients of adverse possession are undoubtedly indispensable even in a plea of ouster. However, there is the additional requirement in the case of ouster that the elements of adverse possession must be shown to have been made known to the co-owner. This is apparently for the reason that the possession of a co-owner is treated as possession of other co-owners. While it may be true that it may not be necessary to actually drive out the co-owner from the property as noticed in *Mohd. Zainulabudeen* (since deceased) by *Irs. v. Sayed Ahmed Mohideen and Others*, mere continuance in the possession of a co-owner does not suffice to set up a plea of ouster. The possession of the co-owner will also be referable to lawful title. The possession of the appellant even of the ground floor of the building on the land in question, was entirely in accord with his right as a co-owner."

From the aforesaid principle of law laid down by the Hon'ble Apex Court it appears to me that the present appellants in course of hearing of arguments could not satisfy the Court that since it was a joint family property, so, the plea of the appellants that their predecessor was in possession of the entire suit land cannot be deemed to be adverse for

other co-sharers unless there has been ouster of other co-sharers and there is no such evidence on record like that.

21. In course of hearing of arguments, Learned counsel for the appellants further took the plea the present appellants and their predecessor acquired right of adverse possession over the suit land but in this regard, the appellants could not show any documentary evidence on record either to the Lower Court or even before this Court also. So, the plea taken by Learned Counsel for the appellants cannot be accepted at this stage in absence of cogent evidence on record.

22. Thus, after hearing both the rival parties and also after going through the aforesaid citations and after going through the record of the Learned Court below it appears to me that the Learned Trial Court below after elaborate discussions and considering all aspects rightly delivered the judgment and there was no perversity on that.

23. In the result, the appeal filed by the present appellants stands dismissed being devoid of merit but considering the facts and circumstances of the case no order is passed as to costs.

The judgment and preliminary decree dated 05.04.2022 delivered by Learned Civil Judge, Senior Division, Court No.1, West Tripura, Agartala in connection with Case No.T.S.(P)130 of 2017 is hereby upheld and accordingly it is affirmed. From the record of the Learned Trial Court, it appears that presently the case is pending for hearing on the report of Survey Commissioner. So, the Learned Trial Court below after proper hearing of both the parties and affording opportunity shall consider the report of Survey Commissioner and if required, a fresh Survey Commission be conducted for this purpose the cost of which would be borne by the respective parties and thereafter

shall pass a final decree within a period of 4(four) months from the date of receipt of copy of this judgment.

Draw the decree accordingly.

Send down the LCRs forthwith along with a copy of the judgment.

Pending application/s, if any, also stands dismissed.

JUDGE