

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.89 of 2024

Goutam Saha, S/o Late Kishori Lal Saha, R/o – Kalinagar, P.O. & P.S. –
Belonia, District – South Tripura.

..... Petitioner(s).

Versus

1. Smt. Shova Rani Saha, W/O-Lt. Kishori Lal Saha, R/O-Kalinagar, P.O & P.S-Belonia, District - South Tripura.
2. Smt. Shakuntala Saha (Majumder), W/O-Sri Ramapada Majumder, D/O-Lt. Kishori Lal Saha, R/O-Kalinagar, P.O & P.S-Belonia, District South Tripura.
3. Smt. Manikana Saha, W/O - Sri Krishna Pada Pal Chowdhury, D/O-Lt. Kishori Lal Saha, R/O - College Tilla, P.O - Agartala, P.S-East Agartala, District-West Tripura.
4. Smt. Pritikana Saha, D/O-Lt. Kishori Lal Saha, R/O - Kalinagar, P.O & P.S - Belonia, District - South Tripura.
5. Smt. Dipti Kana Saha, W/O - Sri Mahadev Saha, D/O-Lt. Kishori Lal Saha, Resident of Ashram Para, P.O-Jolaipara, P.S - Baikhora, District - South Tripura.

..... Respondent(s).

For Petitioner (s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Kawsik Nath, Advocate,
Ms. A. Debbarma, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

19/09//2024

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr.
Kawsik Nath, learned counsel for the petitioners

[2] T.S.(P) No.04/2018 was allowed by the learned Civil Judge, Sr.
Division, South Tripura, Belonia vide judgment dated 11.04.2022 with the
following order:

“[26] In the result, the case of the plaintiffs is decreed with
contest without cost and it is hereby ordered and declared that
the plaintiffs are entitled to get 1/6th (one-sixth) share of the

suit land comprised in Khatian No. 170 of Mouja and Tehsil Kachari - Belonia under Belonia Sub-Division.

The defendant is also entitled to get 1/6th (one-sixth) share of the suit land comprised in Khatian No. 170 of Mouja and Tehsil Kachari - Belonia under Belonia Sub-Division.

[27] The parties are at liberty to make amicable partition of the suit land as per the shares given above within the next 03 (three) months and in case of failure, any of the party can knock the door of this Court for partition of the suit land by meets and bounds as per preliminary decree.

[28] Draw a preliminary decree and place before me for signature within 14 days from today.

[29] The judgment is given under my hand and seal of this court on this the 11 April, 2022.

[30] Make necessary entry in the relevant trial register and as well as CIS.”

[3] After completion of the trial, a preliminary decree was passed in favour of the plaintiffs and defendant. A survey commissioner was appointed for demarcation of the suit land. The survey commissioner's report was objected by the defendant. In the meantime, on 17.06.2023 the plaintiff-Shova Rani Saha expired leaving behind plaintiff Nos.2, 3, 4 and 5 and defendant as her legal heirs. On behalf of the remaining plaintiffs it was submitted before the learned trial Court that apart from the above legal heirs, the deceased plaintiff-Shova Rani Saha left no other legal heirs. Therefore, they prayed to struck out the name of the plaintiff No.1 and to divide the suit land into 5(five) equal share in place of 6(six) equal share and also to appoint new survey commissioner for making partition of the suit land. This application under Order XXII Rule 2 of the CPC was allowed vide order dated 09.01.2024. A new survey commissioner was appointed for fresh partition of the suit land amongst the surviving plaintiffs and sole defendant. The earlier report dated 06.07.2023 was discarded. Thereafter, during course of survey both sides stated that they had arrived at a compromise and the suit property be mutually partitioned as per their compromise and divided into equal parts. When the matter was taken up on 22.07.2024, the survey commissioner submitted his report. The survey commissioner's report dated

15.06.2024 along with compromise petition jointly signed by the plaintiffs and defendant were placed before the Court. The learned Court, however, observed that the plaintiffs and defendant have submitted an application stating that they have arrived for mutual partition of the suit land and requested not to divide the plots as per the order of the Court. Since the survey report did not contain demarcation and partition of the suit land, it was contrary to the preliminary decree passed by the Court. In this background, the learned Court directed the survey commissioner to make partition of the suit land between the existing plaintiffs and the defendant in equal share as the existing plaintiffs and defendant are legal heirs of the deceased plaintiff-Shova Rani Saha.

[4] The defendant has preferred this revision petition against the order dated 22.07.2024. In the meantime, the matter was further taken up on 06.09.2024 and the learned trial Court was informed that the defendant has filed a revision petition before this Court. The learned Court took into note that the survey commissioner had submitted a report on 21.08.2024 regarding partition of the suit land between the existing plaintiffs and the defendant along with hand sketch map and actual map of the suit land. The report showed that the suit land had been partitioned in equal share amongst the plaintiffs and the defendant. To this report, the parties are asked to file written objection, if any, and the matter has been fixed on 21.09.2024.

[5] Learned counsel for the petitioner submits that though the parties are ready and willing to submit their objection to the survey report dated 21.08.2024 but in view of the directions passed by the learned trial Court on 22.07.2024, the learned trial Court may be inhibited in considering the objections raised by both the sides to the latest survey commissioner report dated 15.06.2024 since it had

already expressed its view that the suit property is to be demarcated as per the order of the Court and not taking into account the compromise jointly signed by the parties after the death of Shova Rani Saha, plaintiff No.1.

[6] It appears upon hearing learned counsel for the petitioner in the aforesaid background facts that the learned trial Court was dissatisfied with the survey commissioner's report on the previous occasions as he had failed to submit any demarcation of the suit land in terms of the order passed by the learned trial Court and only enclosed the compromise petition jointly signed by the parties to his report. The learned trial Court, therefore, directed the survey commissioner to abide by the directions of the Court and submit a fresh report in presence of the parties showing the demarcation of the suit land. Now, once that report has been submitted and both the parties who are now the surviving legal heirs of plaintiff No.1 as allowed by order dated 09.01.2024 under Order XXII Rule 2 of CPC, the parties should file their objections, if any, before the learned trial Court to the latest survey commissioner report in the light of the compromise petition said to be jointly signed by the parties. As observed by the learned trial Court in its order dated 06.09.2024, objections, if any, on the report of survey commissioner are to be considered by the learned trial Court for which the matter has been fixed on 21.09.2024. The learned trial Court is expected to keep into account the objections raised by the parties without being inhibited by its earlier order dated 22.07.2024 whereby the survey commissioner was directed to prepare the report in presence of the parties with the actual demarcation of the land. Since the learned trial Court is in seisin of the matter, this Court does not express any opinion either way on the compromise petition said to be jointly signed by the parties or the report of the survey commissioner demarcating the

land as per the judgment of the learned trial Court as it is for the learned trial Court to arrive at a decision thereupon after hearing the parties.

[7] The instant petition, therefore, stands disposed of with the aforesaid observations. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ

