

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.02 of 2025

Shri Raviul Hossain, aged about 65 years.

S/o:- Lt. Abdul Gafur

Boxanagar, (Mullah Mura), P.S. Kalamchoura,

District: Sepahijala.

.....Appellant(s).

Versus

1. Smt Basana Khatun alias Basana Begam

W/o:- Khaliur Rahman, D/o:- Late Abdul Gofur

Vill. & PO. Kamalnagar, P.S. Sonamura,

District Sepahijala (previously under West Tripura).

2. Shri Jamir Hossain

S/o:- Lt. Abdul Gofur

3. Smt. Khuseda Begam

D/o:- Lt. Abdul Gofur

Both are resident of Boxanagar (Mullah para), P.S. Kalamchoura,
District Sepahijala (Previously under West Tripura).

4. Smt. Ramuja Khatun

D/o:- Lt. Abdul Gofur

W/o:- Shri Ful Miah

Resident of Boxanagar (Mollapara),
P.S. Kalamchoura, District Sepahijala (Previously under West
Tripura).

5. Smt. Hasena Khatun

D/o. Late Abdul Gofur

W/o. Shri Jalil Miah

Resident of Narayanpur, Kandarpar,
PO. Salda-Nadi, PS. Kasba, District
Brahmanbaria, Bangladesh.

6. Md. Sadek Miah

7. Smt. Papia Akhtar

Both son and daughter of Late Rasana Khatun, W/o. Tajul Islam
respectively, both resident of Vill. Kadamtali, P.S. Bishalgarh,
District Sepahijala, (Previously West Tripura).

.....Respondent(s).

For Appellant(s) : Mr. Ashutosh De, Advocate.
: Mr. Robel Hossain, Advocate.

For Respondent(s) : None.

Date of Hearing
& Date of Judgment : **04.04.2025.**

Whether fit for reporting : **NO**

**_B_E_F_O_R_E_
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

JUDGMENT & ORDER(ORAL)

Heard Mr. Ashutosh De, learned counsel appearing for the appellant.

[2] The appeal has been filed in challenging the judgment dated 18.11.2024 passed by Ld. District Judge, Sepahijala District, Sonamura in Title Appeal No.05 of 2019 whereby appeal was dismissed. The background fact in gist is that the respondent no.1 as plaintiff filed a Title Suit (Partition) 83 of 2009 against the present appellant and others praying for partition of the suit land. The claim of the parties are that one Abdul Gafur, the predecessor of the parties was the owner of the suit land and on his death the entire land devolves upon the parties and Khatian bearing No.990/1 of Mouja Boxanagar was mutated in their names reflecting their respective shares therein. Said Abdul Gafur at the time of his death left his two wives namely Sufiya Khatun and Shyamala Khatoon and before institution of this suit said Sufiya Khatun expired and during pendency of this suit Shyamala Khatoon expired. The present appellant is one son of said Sufiya Khatun. The Court of Ld. Civil Judge (Senior Division), West Tripura: Agartala Court no.1 by judgment dated 19.09.2015 decreed the suit in preliminary form in the following terms:

"

/ORDER/

In the result the suit stands decreed partly on contest without cost. The parties to the suit are entitled to their respective shares in the land measuring 3.11

acres recorded in Khatian No.2068 jer 2070 corresponding new Khatian No.990/1 of Mouja & Teshil-Boxonagar.

The defendant No.6 being the wife of Abdul Gafur is entitled to 1/8th share.

The Plaintiff, Defendant Nos.3,4,5 and Rasana Khatun being the daughters of Abdul Gafur are entitled to 1/9th share each. The share of Rasana Khatun be allotted to her children i.e., the defendant Nos.7 and 8.

The defendant Nos.1 and 2 being the son of Abdul Gafur are also entitled to 2/9th share each.

Shares be allotted to the Plaintiff and defendant Nos.1 to 5,7 and 8 after deducting the share of defendant No.6.

Parties to the suit to effect partition of the aforesaid land by metes and bounds according to their respective shares as declared here-in-above within a period of two months. Failing which each party to the suit shall be at liberty to have a Final Decree in accordance with law.

Prepare Preliminary Decree.

This suit stands disposed of accordingly.

Enter the result."

[3] Parties thereafter could not settle the dispute amicably and ultimately petition for final decree was filed by the plaintiff. Survey Commissioner was appointed and he submitted report. None of the parties filed any written objection against the said report and ultimately Ld. Trial Court accepted the said report and passed the final decree.

[4] Now challenging the said final decree above said Title Appeal No.5 of 2019 was filed by the appellant in the Court of Ld. District Judge, Sepahijala District, Sonamura. The main challenge of the appellant in the said appeal was that when his mother Sufiya Khatun expired, the share of Sufiya Khatun ought to have been distributed amongst the appellant as one son and Jamir

Hossain(defendant no.2) and daughter Khuseda Begam (defendant no.3), but her share was not distributed in this manner in the preliminary decree. Ld. District Judge dismissed the appeal mainly on the said ground that when preliminary decree was not challenged by the defendant-appellant, he was debarred from challenging the correctness of said decree on that ground in an appeal filed challenging the final decree. Against said dismissal of the appeal, the present appeal has been filed.

[5] Mr. De, learned counsel strenuously argues that it is the genuine cause of the appellant that the share of his mother was not distributed exclusively to the legal heirs of his mother rather same has been distributed to all the parties to the suit and which is illegal and erroneous, but despite the same, Ld. First Appellate Court missed to take that aspect into consideration and illegally dismissed the appeal. To support such contention Mr. De, learned counsel also relies on a decision of Patna High Court rendered in ***Bhola Sahu alias Bhola Sah vs. Chandu Sahu (Second Appeal No.287 of 2017*** decided on **12.08.2024**) wherein in the relevant paragraph no.24 it was observed that the appellant of said title appeal did not challenge the correctness of the preliminary decree passed in partition suit and, therefore, any aggrieved party, who did not file any appeal against the preliminary decree with regard to right, title and interest or shares can challenge final decree in appeal.

[6] Mr. De, learned counsel also relies on another decision of Calcutta High Court in case of **Bejoy Krishna Sadhukhan vs. Gangadhar Sadhukhan & Ors., AIR 1988 CaL 430** wherein, in the judgment of the Trial Court there was no mention of share of respondent no.1 & 2 of that appeal in the preliminary decree. However, the appeal was filed challenging the final decree in the High Court. Finally, while deciding the appeal, the Commissioner's report submitted in that suit was rejected by the High Court and liberty was given to the plaintiff appellant to apply in the Trial Court for appointment of a Commissioner for effecting partition of the suit-property in accordance with the terms of preliminary decree. However, there is nothing in the said decision that in an appeal challenging the final decree the terms of preliminary decree was modified or altered.

[7] The Court has given due consideration to the submission of learned counsel of the appellant and also have meticulously gone through the record. The basic grievance of the appellant as indicated above is the erroneous finding of Ld. Trial Court in the preliminary decree based on which the final decree was passed. However, admittedly the appellant did not challenge this preliminary decree by filing any appeal and even he did not file any objection against the Survey Commissioner's report. It is only after the final decree was passed based on the Survey Commissioner's report, the appellant approached Ld. First Appellate Court for setting aside the final decree. *Section 97 of CPC* clearly bars that where any party aggrieved by a preliminary

decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

[8] In view of above said provision, ***Hon'ble Apex Court in Chittoori Subbanna Vs. Kudappa Subbanna & Ors, 1964 SCC Online SC 322*** also similarly observed that the appellant in the appeal was precluded from making any challenge to a direction in the preliminary decree as he filed the appeal challenging the final decree.

[9] In view of above, the appellant cannot be permitted now to challenge the correctness of the preliminary decree at this stage in this forum. Another plea has been raised in the memo of appeal that while preparing final decree the higher potentiality of front portion of the suit land and comparatively less potentiality of rear portion of the suit land was also not taken into consideration. However such plea is also not tenable at this stage as the appellant did not opt to file any objection against the report of Survey Commissioner in the Trial Court and choose to remain silent on the said report without any sort of grievance.

In view of all these reasons, this Court finds no substantial question of law to be formulated in this appeal by admitting the same.

Accordingly, the appeal is not admitted and thus disposed of.

Send a copy of this Judgment and Order to the Courts below.

Pending application(s), if any, shall also stands disposed of.

HIGH COURT OF TRIPURA

JUDGE



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