

Party Name : SMT. ARATI CHAKRABORTY & ORS Vs KARTIK CH. CHAKRABORTY

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

Heard.

This is a petition for reviewing the judgment and order dated 9th December, 2014 passed by this Court in SAO No. 01 of 2011. It is not disputed that the suit was filed for partition of the property and in the schedule of the suit the extent of the property was shown to be 42.01 acres. However, when actual survey was done on the spot, the suit property was found to be 39.99 acres. It is also not disputed that 3.55 acre of land had already been sold by the plaintiff and defendant No.2, Sri Bisweswar Chakraborty had sold more than 16 acres of land.

This Court while passing the order, review of which has been sought was under the assumption that the land sold by the plaintiff and by Sri Bisweswar Chakraborty was not part of the scheduled land but was land other than the scheduled land.

This review petition has been filed in which it is claimed that in fact 3.55 acres of land and 16 acres of land sold by the plaintiff and the Sri Bisweswar Chakraborty are both part of the total land measuring 39.99 acres. Therefore, there is an error apparent on the record.

This Court has held that the plaintiff (Sri Kartik chandra Chakraborty), Sri Bisweswar Chakraborty and the other eight main share holders are each entitled to 1/10th share in the property in question.

Sri Bisweswar Chakraborty has sold more than 16 acres of land. Nobody has challenged the sale deed executed by Sri Bisweswar Chakraborty and therefore, the land which is actually to be partitioned is little about 23.99 acres. Sri Bisweswar Chakraborty is not entitled to any share out of this land because he has admittedly sold more than his share of land. The remaining persons would be entitled to 1/9th share in this land which works out to 2.67 acres of land. The plaintiff has already sold 3.55 acres of land and, therefore, he has also sold in excess of his share and he cannot be granted any land out of the remaining portion of land. The remaining land is $23.99 - 3.55 = 20.44$ acres.

Therefore, remaining 20.44 acres of land shall be partitioned equally amongst the 8 (eight) main share holders and each one of them is entitled to about 2.54 acres of land, but while making the actual partition, value of the land shall be taken into consideration while assessing to what exact amount of land each of the eight share holders is entitled to.

It is however, made clear that Sri Kartik chandra Chakraborty and Sri Bisweswar Chakraborty will not be entitled to any land out of this 20.44 acres of land.

With this direction, review petition is disposed of. No costs.