

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRP NO.04 OF 2013

Smt. Sita Acharjee (Mahanta),
daughter of late Sushil Acharjee,
wife of Sri Manik Mahanta,
resident of Post Office Road,
P.O. & P.S. Kadamtala, District : North Tripura,
at present residing at Dimapur,
Nagaland with her husband,
represented by her husband,
Sri Manik Mahanta (Sharma),
son of late Harmohan Mahanta,
resident of Post Office Road,
P.O. & P.S. Kadamtala, District : North Tripura,
at present residing at Dimapur, Nagaland.

.....Petitioner

– Vs –

1. Smt. Arati Acharjee,
wife of late Sushil Acharjee,
resident of Kadamtala Bazar,
P.O. & P.S. Kadamtala, District : North Tripura
2. Sri Shyamal Acharjee,
son of late Sushil Acharjee,
Assistant Engineer, P.H.E. Rig Sub-Division,
P.O. Kunjaban, P.S. East Agartala,
Agartala, West Tripura
3. Smt. Anjali Acharjee,
daughter of late Sushil Acharjee,
wife of Sri Nitai Acharjee,
Basic Training College, G.B., Agartala,
P.O. Abhoynagar, P.S. East Agartala,
District : West Tripura
4. Sri Sudip Acharjee,
son of late Sushil Acharjee,
resident of Kadamtala Bazar,
P.O. & P.S. Kadamtala, District : North Tripura
5. Smt. Manjushree Acharjee,
daughter of late Sushil Acharjee,
wife of Sri Ashish Acharjee,
resident of Jangla Kalibari Road, Badarpur Ghat,
P.O. & P.S. Badarpur, District : Karimganj, Assam

6. Smt. Mitali Ghosh (Acharjee),
daughter of Sri Litan Ghosh,
resident of Station Road,
P.O. & P.S. Churaibari, District North Tripura
7. Sri Tridibesh alias Swapan Acharjee,
son of late Sushil Acharjee,
resident of Kadamtala Bazar,
P.O. & P.S. Kadamtala, District : North Tripura
8. Sri Shankar Acharjee,
son of late Sushil Acharjee,
resident of Kadamtala,
P.O. & P.S. Kadamtala, District : North Tripura

..... Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. A. Das Gupta, Advocate

For the respondents : Mr. P. Datta, Advocate

Date of hearing & order : 30.03.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Dasgupta, learned counsel appearing for the petitioner. None appears for the respondents despite they have entered in the appearance by the engaged counsel. There is no prayer before this court for any accommodation and hence this matter is taken up for hearing.

2. This is a petition under Article 227 of the Constitution of India against the order dated 10.07.2012 delivered in

T.S.18(Pt)2008 by the Civil Judge, Sr. Division, Dharmanagar, North Tripura.

3. There is no dispute that by the judgment and preliminary decree dated 03.04.2010, the Civil Judge, Sr. Division, Dharmanagar, North Tripura, declared the share of the parties in the suit, the plaintiff and the defendants.

4. It has been declared that in the Schedule-A land, Smt. Arati Acharjee, mother of the plaintiff, Sudip Acharjee and Swapan Acharjee, the brothers of the plaintiff, shall get 1/4th share of the land measuring 0.38 acres alongwith him.

From the Schedule-B land, the plaintiff, his mother and his said brothers again would get equal share from that land measuring 0.04 acres.

From the Schedule-C land, where there is a building constructed, the plaintiff and the eight defendants shall get 1/9th share each of the land and the building. Moreover, the parties other than the defendant No.4 shall not get any share to the business carried out by the defendant No.4, under the name and style of M/s Radharaman Cloth Stores.

So far the Schedule-D land of the decree is concerned, the plaintiff and the defendants shall get 1/9th share each from the land measuring 0.13 acres.

5. There is usual direction to make efforts for amicable settlement of the suit property in the manner as provided in the decree within a period of three months, failing which the final decree would be passed based on the preliminary decree for partitioning the joint property land by metes and bounds.

6. Mr. Das Gupta, learned counsel appearing for the petitioner, has fairly submitted that the said judgment and decree has not been challenged by any party. As such, even the petitioner is precluded from challenging the manner in which the preliminary decree has been passed.

7. When the parties failed to get the joint property amicably partitioned and the plaintiff approached for passing the final decree, the court, for purpose of getting the joint property partitioned by metes and bounds, engaged the Survey Commissioner under Order 26 Rule 13 of the CPC so that on the basis of his report the final decree demarcating the share over the joint property can be passed.

8. The grievance of the petitioner, who is defendant No.7 in the suit, is that when the Survey Commissioner surveyed the joint property and allotted the respective shares of land, neither she nor her counsel was given any notice to have her say in respect of the survey for partitioning the joint property land under question as delineated in Schedules A, B, C and D of the preliminary decree.

9. Having aggrieved by such conduct of the Survey Commissioner, namely Basanta Kumar Das, the petitioner filed a written objection contending, *inter alia* that she has serious reservation and objection against the said survey report, inasmuch as in her absence the Survey Commissioner has allotted a piece of land from the Schedule-D, which land is disadvantageous and having lesser value. Even she has stated that her share in the Schedule-C land was not allotted at all.

10. Mr. Das Gupta, learned counsel appearing for the petitioner, has submitted that the Survey Commissioner's report on its face is contrary to the preliminary decree. It appears that the Survey Commissioner has travelled far beyond the preliminary decree. Deviation from the preliminary decree is permissible with leave of the court and the Survey Commissioner does not have any authority to relocate the share in contrast to the preliminary report. It appears from the Survey Commissioner's report that, while surveying the Schedule-C land, the Survey Commissioner has observed as under :

"Be it noted herein that – Sri Shankar Acharjee and Sudip Acharjee have informed verbally in order to getting the Dokan Vity land noted in Schedule-C. The said land has been partitioned as they will not take share over the Bastu classes of land."

The Survey Commissioner has further observed that :

"The plaintiff and the defendants attended therein have agreed to this partition of the land."

11. The petitioner herein has raised objection against such observation as she was not at all present neither was she represented by her engaged counsel. Despite that, by the impugned order dated 10.07.2012, the Civil Judge, Sr. Division, Dharmanagar, North Tripura, has observed as under :

"The report of survey commissioner Basanta Kr. Das clearly speaks that plaintiff and defendants remain present and accepted the partition done by him by making survey.

Mere upon preferring a petition or bringing a point that survey commissioner did not inform the defendant No.7, I do not find much force to accept the contention. There is no reason to believe that the survey commissioner Basanta Kr. Das falsely made his comment that plaintiff and defendant side had actually accepted the partition done by him. On perusal of the report of survey commissioner, I find that defendant No.7 Sita was allotted very reasonable portion of land in the Schedule D. So, it cannot be said that the defendant No.7 Sita was deprived not giving/allotting any land by the survey commissioner. Rather it appears that though the allegation was made for one ninth share considering the quantum of land Sita (Defendant No.7) cannot be deprived by the survey commissioner in any manner."

After observing such, the final decree has been passed in terms of the Survey Commissioner's report.

12. Having scrutinised the Survey Commissioner's report, this court finds that there is no record that the petitioner was present at the time when the survey was carried out. Rather it is found from the records that the plaintiff, Sri Sankar Acharjee, defendants, namely Smt. Arati Acharjee, Sri Sudip Acharjee, Sri

Swapan Acharjee, Smt. Mitali Acharjee (Ghosh) and the neighbours, namely Sri Karuna Nath and Sri Dipak Mishra were present during the survey. Apart that, what appears is that there is no clear partition of the Schedule-C land where the building is standing. Except the observation as noted hereinabove, there is nothing about the partition of the Schedule-C land. But, the preliminary decree has clearly mentioned that in the Schedule-C land and the building therein, the parties, meaning thereby the plaintiff and the defendants shall have their 1/9th share each. Unless someone makes adjustment and agrees to a particular arrangement, the Survey Commissioner had no business to depart from the preliminary decree. By accepting such report of the Survey Commissioner, the Civil Judge, Sr. Division, Dharmanagar, North Tripura, has committed serious illegality, warranting this court to interfere with the impugned order dated 10.07.2012 and accordingly, the said order is quashed and set aside.

13. As corollary to the observation as above, the Civil Judge, Sr. Division, Dharmanagar, North Tripura, is directed to engage another Survey Commissioner to cause equitable partition of the joint property in terms of the preliminary decree after giving formal notice to all the parties and submit the report for purpose of preparing the final decree. Necessary time-frame and other conditions for purpose of the survey be made by the Civil Judge, Sr. Division, Dharmanagar, North Tripura. It is made clear

that even after receipt of the notice, if any party fails to attend the survey that by itself would not constitute any defect in the report.

14. Accordingly, this petition stands allowed. There shall be no order as to costs.

Send down the LCRs forthwith.

JUDGE

ROY