

THE HIGH COURT OF TRIPURA
AGARTALA

CRP 62 of 2014

1. Smt. Anjali Deb, W/O Late Rajendra Chandra Deb,
2. Sri Santosh Deb, S/O Late Rajendra Chandra Deb,
3. Sri Samir Deb, S/O Late Rajendra Chandra Deb
4. Sri Biswajit (@ Tutan) Deb,
S/O Late Rajendra Chandra Deb

... Sl. No. 1 to 4 all are the residents of Village
Radhamohanpur, P.S. Jirania, Sub Division – Jirania,
(Erstwhile Sub-Division Sadar), District West Tripura.

5. Sri Bimal Deb, S/O. Late Rajendra Chandra Deb
Resident of Sonamura Jail Quarters, P.S. Sonamura,
District – Shipahijala.

..... *Petitioners*

- Vs. -

1. Sri Jitendra Chandra Deb,
S/O Late Surjya Kumar Deb,
Resident of Netaji Palli, Agartala, P.S. West Agartala,
Sub Division Sadar, District – West Tripura.

..... *Plaintiff-Respondent*

2. Sri Manindra Chandra Deb,
S/O Late Surjya Kumar Deb,
C/O – N.F. Railway School, P.O. Jagi Road,
Mari Gaon, Assam.

- 3.(i) Smt. Nilima Ghosh (Deb)
W/O – Late Amitabha Deb.

- 3.(ii) Sri Amitesh Deb @ Partha Deb
S/O – Late Amitabha Deb.

- 3.(iii) Sri Arunesh Deb @ Raju Deb
S/O. Late Amitabha Deb.

... .. Sl. No.3(i) to 3(iii) are the Legal Heirs of
Late Amitabha Deb, S/O Late Surjya Kumar Deb

and all are resident of Old Kalibari Lane,
Krishnanagar, Agartala, P.S. – West Agartala,
District West Tripura.

4. Sri Arunabha Deb
S/O Late Surjya Kumar Deb,
Resident of Bardowali, Madhya Para,
(Near Police Welfare Centre),
P.S. West Agartala, District West Tripura.
5. Sri Abhi Deb, S/O Late Rajendra Chandra Deb
Village Radhamohanpur, P.S. Jirania,
Erstwhile Sub-Division Sadar,
District – West Tripura.
6. Smt Manju Rani Deb, D/O Late Rajendra Chandra Deb,
W/O Sri Kalipada Deb, Resident of Village –
Singhicherra, Khowai, P.S. Khowai,
District Khowai, Tripura.
7. Smt Madhabi Deb, D/O Late Rajendra Chandra Deb
W/O Sri Sadhan Deb, resident of Vill. Chandanimura,
P.S. West Agartala, District West Tripura.

..... *Defendant-Respondents*

BEFORE

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the Petitioners	: Mr. Suman Bhattacharjee, Advocate.
For the respondents	: Ms. S. Deb Gupta, Advocate.
Date of hearing	: 28.05.2015.
Delivery of Judgment & order	: 10.07.2015.
Whether fit for reporting	: Yes.

JUDGMENT & ORDER

This petition under Article 227 of the Constitution of India is directed against the order dated 12.03.2014 passed by the learned Civil Judge (Sr. Div), Court No.2, West Tripura, Agartala

whereby he allowed the application filed by the plaintiff and appointed survey commissioner in the matter.

2. Briefly stated the facts of the case are that the plaintiff Jitendra Chandra Deb filed a suit for partition of the suit land mentioned in the schedule of the suit. This suit was contested and by judgment dated 12.03.1998, the suit of the plaintiff was decreed and it was held that the plaintiff and defendants 1 to 3 have 1/5 share of the suit property and defendants 4 to 11 jointly owned the remaining 1/5 share in the suit property. Thereafter, the plaintiff filed an application for preparation of final decree. This application was dismissed as not pressed on 21.08.2000. The order reads as follows:-

"Plaintiff by a petition prays for time on the ground stated in the petition.

Ld. Advocate for the Defdt. is present.

Heard and considered.

Time prayer is allowed.

Fix for payment of S/C fees by pltf. & direction.

Later on Ld advocate for the pltf. Appeared & submits that he does not press for the petition for final decree as pltf. did not deposit S/C fee.

Considered. As Pltf. Is not interested to proceed with petition for final decree.

Petition is dismissed."

3. It appears thereafter, that the plaintiff filed an application under Order XXVI Rule 13 for appointment of survey commissioner and this application was filed on 26.07.2012. This application was contested and the main ground raised was that since the earlier execution petition had been dismissed as not

pressed, the second application was not maintainable. It would be pertinent to mention that in the second application, the plaintiff did not make any reference to the fact that he had earlier filed an execution petition which has been dismissed as not pressed. The learned Court below held that withdrawal of the earlier execution petition would not in any manner act as *res judicata* and therefore, appointed a survey commissioner. This order is under challenge.

4. Reference may be made to the judgment of the Apex Court in ***Shub Karan Bubna alias Shub Karan Prasad Bubna vs. Sita Saran Bubna and others : (2009) 9 SCC 689***, wherein the Apex Court has passed a very erudite judgment with regard to partition decrees and their implementation. The relevant portion of the judgment reads as follows:-

"7. In a suit for partition or separation of a share, the prayer is not only for declaration of the plaintiff's share in the suit properties, but also division of his share by metes and bounds. This involves three issues:

(i) whether the person seeking division has a share or interest in the suit property/properties;

(ii) whether he is entitled to the relief of division and separate possession; and

(iii) how and in what manner, the property/properties should be divided by metes and bounds?

In a suit is for partition or separation of a share, the court at the first stage decides whether the plaintiff has a share in the suit property and whether he is entitled to division and separate possession. The decision on these two issues is exercise of a judicial function and results in first stage decision termed as "decree" under Order 20

Rule 18(1) and termed as "preliminary decree" under Order 20 Rule 18(2) of the Code. The consequential division by metes and bounds, considered to be a ministerial or administrative act requiring the physical inspection, measurements, calculations and considering various permutations/combinations/alternatives of division is referred to the Collector under Rule 18(1) and is the subject matter of the final decree under Rule 18(2).

8. The question is whether the provisions of Limitation Act are inapplicable to an application for drawing up a final decree.

9. Rule 18 of Order 20 of the Code of Civil Procedure ("the Code", for short) deals with decrees in suits for partition or separate possession of a share therein which is extracted below:

"18. Decree in suit for partition of property or separate possession of a share therein.-- Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then, --

(1) if and insofar as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and insofar as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties, interested in the property and giving such further directions as may be required."

10. The terms "preliminary decree" and "final decree" used in the said Rule are defined in the Explanation to section 2(2) of the Code and reads thus :

"Explanation. - A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."

11. Section 54 of the Code dealing with partition of estate or separation of share, relevant for the purposes of Rule 18(1) reads thus:

"54. Partition of estate or separation of share.- Where the decree is for the partition of an undivided estate assessed to the payment of revenue of the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates."

12. Rule 13 of Order 26 of the Code dealing with Commissions to make partition of immovable property, relevant for the purposes of Rule 18(2) reads thus :

"13. Commission to make partition of immovable property. - Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree."

15. It is thus clear that every application which seeks to enforce a right or seeks a remedy or relief on the basis of any cause of action in a civil court, unless otherwise provided, will be subject to the law of limitation. But where an application does not invoke the jurisdiction of the court to grant any fresh relief based on a new cause of action, but merely reminds or requests the court to do its duty by completing the remaining part of the pending suit, there is no question of any limitation. Such an application in a suit which is already pending, which contains no fresh or new prayer for relief is not one to which the Limitation Act, 1963 would apply.

17. Once a court passes a preliminary decree, it is the duty of the court to ensure that the matter is referred to the Collector or a Commissioner for division unless the parties themselves agree as to the manner of division. This duty in the normal course has to be performed by the court itself as a continuation of the preliminary decree. Sometimes either on account of the pendency of an appeal or other circumstances, the court passes the decree under Rule 18(1) or a preliminary decree under Rule 18(2) and the matter goes into storage to be revived only when an application is made by any of the parties, drawing its attention to the pending issue and the need for referring the matter either to the Collector or a Commissioner for actual division of the property. Be that as it may.

20. On the other hand, in a partition suit the preliminary decrees only decide a part of the suit and therefore an application for passing a final decree is only an application in a pending suit, seeking further progress. In partition suits, there can be a preliminary decree followed by a final decree, or there can be a decree which is a combination of preliminary decree and final decree or there can be merely a single decree with certain further steps to be taken by the court. In fact, several applications for final decree are permissible in a partition suit. A decree in a partition suit enures to the benefit of all the co-owners and therefore, it is sometimes said that there is really no judgment-debtor in a partition decree.

21. A preliminary decree for partition only identifies the properties to be subjected to partition, defines and declares the shares/rights of the parties. That part of the prayer relating to actual division by metes and bounds and allotment is left for being completed under the final decree proceedings. Thus the application for final decree as and when made is considered to be an application in a pending suit for granting the relief of division by metes and bounds.

31. Insofar as final decree proceedings are concerned, we see no reason for even legislative intervention. As the provisions of the Code stand at present, initiation of final decree proceedings does not depend upon an application for final decree for initiation (unless the local amendments require the same). As noticed above, the Code does not contemplate filing an application for final decree. Therefore, when a preliminary decree is passed in a partition suit, the proceedings should be continued by fixing dates for further proceedings till a final decree is passed. It is the duty and function of the court. Performance of such function does not require a reminder or nudge from the litigant. The mindset should be to expedite the process of dispute resolution."

5. The Apex Court, therefore, clearly held that final decree proceedings are to be drawn up by the Court whether the party moves an application or not. The Court also held that the provision of the Limitation Act do not apply in such cases. Another important factor is that in partition suits each and every party is both plaintiff and defendant. As far as the present case is

concerned, the Court did not only hold that the plaintiff was entitled to 1/5 share, but also held that defendant Nos.1 to 3 were also entitled to 1/5 share. Any one of these defendants can also approach the Court for preparing the final decree in terms of the preliminary decree. Therefore, no purpose will be served by delaying the matter any further.

6. In this view of the matter, I am of the clear cut view that the order of the learned trial Court has to be upheld.

7. As such, the revision petition is rejected.

8. Send down the L.C.Rs forthwith.

CHIEF JUSTICE

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