

Case No :WP(C) 0000314/2014

Party Name : GOPAL CH. SARKAR & 7 ORS Vs MANIK BISWAS & ANR

THE HONBLE MR. JUSTICE S.C.DAS

Heard learned counsel, Mr. P. Chakraborty for the petitioners and learned counsel, Mr. D. R. Choudhury and Mr. D. Deb for the respondents.

By filing this petition under Article 227 of the Constitution of India, the petitioners, *inter alia*, challenged order dated 20.03.2014, passed by learned Civil Judge, Junior Division, Bishalgarh, West Tripura in case No. Execution(T) 4 of 2009.

No argument advanced in respect of other points mentioned in the writ petition.

It is contended by Mr. Chakraborty, learned counsel of the petitioners that the final decree has not been passed in conformity with the judgment passed by the trial Court and preliminary decree drawn after the judgment. He has also submitted that the respondents also admitted that there was mistake in the decree and the decree may be corrected.

Learned counsel, Mr. Deb referring to para 5 of the written objection has submitted that the decree has been passed for 4.85 acres of land in favour of plaintiff Nos. 2 and 3 and defendant Nos.1 and 2.

Respondent Nos.1 and 2 as plaintiff Nos. 2 and 3 along with another instituted T.S.(Partition) No.19 of 2014 seeking decree of partition of the land mentioned in the schedule of the plaint measuring 5.96 acres. The petitioners herein were arrayed as defendants in the said suit. The trial Court decreed the suit for 4.85 acres and directed that plaintiff No.1 will not get any share in the suit land and that plaintiff Nos. 2 and 3 shall be entitled to get jointly 1/7th share of out of 4.85 acres of suit land and defendant Nos.1 and 2 shall be entitled to remaining part of the suit land in equal share. The operative part of the judgment reads as follows:

"10. In the result, the suit is partly decreed on contest against the defendant No. 1 & 2 and on ex parte against the defendant No.3, 4 & 5. It is hereby declared that the plaintiff No.1 is not entitled to get any share in the suit land. However, plaintiffs No.2 & 3 are entitled to get jointly 1/7th share out of 4.85 acres of land within suit land as stated in paragraph No.8(II) and the defendants No. 1 & 2 are entitled to get remaining part of the land in equal share and it is hereby directed that a partition be made of the aforementioned immovable properties and among the parties within the period of 60 days and in the event of failure(Contd...P/12) a commission be issued to make partition or separation of the same according to the rights of the parties as hereinbefore declared, and that, as regards the immovable properties, he do make the same by moots and bounds and award sums to be paid for the purpose of equalizing of share, where he shall see occasion.

And the further hearing of the case is adjourned, and the parties are at liberty to apply to this court from time to time as they may be advised.

Preliminary decree be prepared accordingly.

Considering the facts and circumstances of the case I do make no order to cost of the suit and the parties are to bear their own costs."

On perusal of the preliminary decree, I find that preliminary decree was prepared as per the judgment passed by the trial Court but in the decree all the schedules of land mentioned in the plaint were incorporated. Final decree has been passed on 24.07.2009 after a Survey Commission and the Survey Commissioner's report was made part of the decree. The Survey Commissioner's report shows that the suit land was divided in 7 shares, whereas, as per the judgment of the trial Court and preliminary decree, the 1/7th share of the decreetal land, i.e. 4.85 acres should go to the plaintiff Nos. 2 and 3 and the remaining part of 4.85 acres should go equally to defendant Nos.1 and 2.

It is the case of the petitioner that they made an application before the trial Court for correction of the decree under Section 152 of CPC but the petition was turned down.

Section 152 of CPC reads as follows:

"152. Amendment of judgments, decrees or orders.

Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any parties."

As per the above provision, errors in the decree may be corrected by the court, which passed the decree. It is apparent that the final decree is not in conformity with the judgment passed by the trial Court and the preliminary decree prepared thereunder. So, the trial Court was supposed to make necessary correction in the final decree and then to go for execution of the decree.

Accordingly, order dated 20.03.2014 passed by the trial Court in case No. Execution(T) 4 of 2009 is set aside. The trial Court is directed to make necessary correction in the final decree and then to go ahead with the execution of the decree.

The writ petition, accordingly, stands disposed of.

Send a copy of the order to the concerned Court.