

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.97 of 2016

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Vijay Kumar Son of late Rama Shankar Prasad, Resident of Village Raghunathpur, P.S.- Brahmapur Revenue, District - Buxar.

... .. Appellant

Versus

1. Krishna Kumar
2. Shiv Kumar
3. Bhola Prasad.
4. Mohan Prasad
5. Sohan Prasad
6. Ajay Kumar

All sons of late Rama Shankar Prasad, Resident of Village Raghunathpur, P.S.- Brahmapur Revenue, District Buxar.

... .. Respondents

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Appearance :

For the Appellant/s : Mr. Arbind Kumar, Advocate
For the Respondent/s : Mr. Waliur Rahman, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 12-03-2019 Heard learned counsel for the appellant and learned counsel for respondent no.1.

The appellant has filed the second appeal against the judgment and preparation of final decree and affirmation of Survey Knowing Pleader Commissioner's Report. It is admitted fact that the preliminary decree passed in Title Suit No.95 of 1995 was affirmed upto the Hon'ble Supreme Court and thereafter preparation of final decree was taken up. The Survey Knowing Pleader Commissioner was appointed and the report of Survey Knowing Pleader Commissioner was affirmed.



Learned counsel for the appellant submits that during course of hearing of the suit Survey Knowing Pleader Commissioner submitted his report about the length of land as 28 feet but while preparing final decree, the Survey Knowing Pleader Commissioner gave his report about the length of land to be 31 $\frac{1}{4}$ feet. The appellant is residing in the house and there is discrepancy in the report of the Survey Knowing Pleader Commissioner, therefore, the final decree is liable to be set aside and a fresh Survey Knowing Pleader Commissioner should be appointed to measure the land before finalization of final decree.

Learned counsel for respondent no.1, on the other hand, submits that the appellant is the sole contesting defendant, who lost the case up to the Hon'ble Supreme Court against the preliminary decree. Out of 5 katha land, 2 $\frac{1}{2}$ katha is self acquired property of respondent no.1. Respondent no.1 is found entitled to 1/7th share in rest 2 $\frac{1}{2}$ katha land. Survey knowing Pleader Commissioner measured the land according to the share allotted to the plaintiff-respondent no.1. Sufficient opportunity was given to the defendant-appellant to file objection on the report of Survey Knowing Pleader Commissioner and when the appellant did not file objection, the report of the Survey Knowing Pleader Commissioner was accepted. The appellant is



only pursuing the appeal only to linger the litigation.

Having considered the submissions of both sides and on perusal of the judgments it appears that the share has already been carved out and the plaintiff-respondents are entitled to get 1/7th share in the suit land including Plot No.527 measuring 2 ½ katha land. The Survey Knowing Pleader Commissioner submitted his report and sufficient opportunity was given to the appellant to file objection but the appellant did not file any objection against the said report and only thereafter the report of Survey Knowing Pleader Commissioner was accepted and final decree was prepared. Both the courts below have considered the objections of the appellant on the report of the Survey Knowing Pleader Commissioner and both the courts have concluded the finding holding that the report of Survey Knowing Pleader Commissioner is not required to be interfered by which the share of the plaintiff-respondent no.1 as defined in preliminary decree has been carved out. Thus, I do not find any substantial question of law involved in this second appeal, which is accordingly dismissed.

(Prabhat Kumar Jha, J)

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