

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.250 of 2017

1. Afzal Hasnnat @ Hasnain.
2. Ifthekar Hasnnat @ Hasnain. Both sons of Late Abul Hasnat, Resident of Mohalla- Char Mazar at P.O.+P.S.- Maner, District- Patna.

... .. Defendants-Appellants-Appellants.
Versus

1. Naqvi Hasnain.
2. Waliul Hasnain. Both sons of Late Abul Hasain.
3. Abtab Alam, S/o Late Ali Hasnain. All R/o Mohalla- Char Mazar at P.O.+P.S.- Maner, District- Patna.
... ..Plaintiffs-Respondents-Respondents-Respondent Ist Set.
4. Rana Parveen, W/o Iqbal.
5. Shabana Azmi, W/o Md. Islam.
6. Ilfana Azmi, W/o Shaukat Ansari.
7. Husna Bano, W/o Md. Nasir Ahmed,
8. Seema Bano, W/o Md. Mahsin Ali.
9. Shakila Praveen, W/o Taj Mohammad.
10. Nargis Sayaba, W/o Taj Shakil. All R/o Mohalla- Char Mazar at P.O.+P.S.- Maner, District- Patna.

... .. Defendants-Appellants-Appellants-Respondent IInd Set

Appearance :

For the Appellants : Mr.Mallika Mazumdar, Advocate.
For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

9 18-02-2020 Heard learned counsel for the appellants under Order-XLI, Rule-11 of the Code of Civil Procedure.

2. The present appeal has been filed by the defendants/appellants/appellants against the judgment and decree dated 04.02.2017, passed by the learned Additional District & Sessions Judge-II, Danapur, passed in Title Appeal No. 31/2005 whereby the appellate court dismissing the appeal



has affirmed the judgment and decree dated 19.03.2005, passed by the learned Sub Judge-III, Danapur, in Title Partition Suit No. 149/1984 whereby the learned Sub Judge-III, Danapur, has accepted the report of Survey Knowing Pleader Commissioner, holding report be part of final decree.

3. The plaintiffs/respondents/respondents have filed Title Partition Suit No. 149/1984 for $\frac{1}{2}$ share in the land mentioned in Schedule-B of the plaint which was decreed vide judgment dated 25.05.1996 and preliminary decree was prepared, against which defendants/appellants/appellants have filed First Appeal No. 106/1996, which was also dismissed vide judgment dated 18.03.1996 and thereafter the Survey Knowing Pleader Commissioner was appointed, who submitted report on 30.11.1998 allocating $\frac{1}{2}$ and $\frac{1}{2}$ share to the plaintiffs and defendants along with field book.

4. The defendants/appellants/appellants filed objection on the report of the Survey Knowing Pleader Commissioner raising objection that the Survey Knowing Pleader Commissioner while preparing Takhtabandi (allocating $\frac{1}{2}$ and $\frac{1}{2}$ share to the plaintiffs and defendants) has divided agricultural land $\frac{1}{2}$ and $\frac{1}{2}$ resulting that the land became agricultural, also raising objection that front portion has been



allocated in favour of the plaintiffs and back portion allocated to the defendants/appellants/appellants. Further raising objection that though both the parties are residing in their share and there is wall existing between the plaintiffs and defendants but ignoring the existing wall Survey Knowing Pleader Commissioner has reported to demolish and given $\frac{1}{2}$ and $\frac{1}{2}$ and as such the Survey Knowing Pleader Commissioner has not considered feasibility of parties and has not scientifically allocated share to the appellants and has prayed to reject the report of Survey Knowing Pleader Commissioner.

5. On the other hand, plaintiffs filed rejoinder and submitted that the Survey Knowing Pleader Commissioner has rightly given $\frac{1}{2}$ and $\frac{1}{2}$ share in every of the plot, so that none of the parties can claim and has further submitted that the objection filed by the defendants be rejected.

6. After hearing of both parties, learned Sub Judge-III, Danapur, rejected the objection filed by the defendants holding that from perusal of Exhibit- 4 (Report of Commissioner), it appears that both parties has been given equal share and convenience of defendants has also been considered by the Survey Knowing Pleader Commissioner in its report and at the time of agreement when the defendants were asked that if



they are not satisfied with their share can exchange from the share of the plaintiffs (as it was also offered by the plaintiffs)but the defendants refused to take share of plaintiffs and as such it appears that objection filed by the defendants is not reasonable and accepted report of the Survey Knowing Pleader Commissioner holding that the report of the Survey Knowing Pleader Commissioner be part of final decree.

7. Being aggrieved from the final decree, defendants filed Title Appeal No. 31/2005 which was dismissed by the appellate court holding that the objection of the defendants appears to be unreasonable and only to delay the matter, as when the offer was given by the plaintiffs to exchange the plots allotted him, defendants refused. Hence, the present appeal has been filed.

8. In course of argument the learned counsel for the appellants has while formulating questions of law has given much stress on the following questions of law.

- (i) Whether the decree not being prepared in a scientific manner can sustain in the eye of law?
- (ii) Whether the objections made by the appellants in preparation of final decree



and the court ignoring it is justified in
eye of law?

9. From perusal of the judgment of the learned Trial Court as well as learned Appellate Court, it appears that in the court below also this issue was raised by the defendants raising objection that valuation of the land was not properly assessed and secondly there was no occasion of the Survey Knowing Pleader Commissioner to report for demolish of the division wall and allocation of $\frac{1}{2}$ and $\frac{1}{2}$ share in residential house and also that the Survey Knowing Pleader Commissioner had no occasion to make the agricultural land divided in small piece by allocating $\frac{1}{2}$ and $\frac{1}{2}$ in all plots rather it should be partitioned plotwise but it appears from the objection filed by the defendants before the court below as well as appellate court that though the defendants had full knowledge of appointment of Survey Knowing Pleader Commissioner and fixing of date for measurement and spot verification, the defendants never appeared nor filed any objection to the Survey Knowing Pleader Commissioner requesting to make partition plotwise rather it appears from the report of the Survey Knowing Pleader Commissioner that the Survey Knowing Pleader Commissioner was well justified giving $\frac{1}{2}$ and $\frac{1}{2}$ share to the plaintiffs and



defendants so that none of the parties can claim that other has been given better plots and of more valuation, rather further it appears from the judgment of both courts that the plaintiffs have offered before Trial Court as well as appellate court that if the defendants are feeling that they have been given inferior plots and of less value they can exchange their plots/share from plot /share of plaintiffs but it appears that despite of offer given by plaintiffs the defendants/appellants/appellants refused which prima facie shows that the defendants are only trying to not make effective partition and to delay the matter.

10. Secondly, so far the objection of valuation and allocation of back portion of the residential house is concerned, the Survey Knowing Pleader Commissioner in its report convenience of the defendants has also been considered and it appears from the report that there is a road for entrance of the defendants and as such the defendants can't claim that the land has not been properly valued, and even though if the defendants were dissatisfied with the share when offer was given by the plaintiffs /decree holder to exchange their share, the defendants refused to accept the offer. Further it appears from the judgment of both court below that the defendants also contested preliminary decree by filing appeal which they lost and now



there can't be any objection on the point of share, rather the scope of final decree proceeding is only up to the extent of equal valuation of the share allocated to the parties according to preliminary decree, and from the judgment it appears that when offer was given to the defendants/appellants to take share of plaintiffs and get exchange their share the defendants refused and as such, I find that there is no substantial questions of law involved and accordingly the appeal is dismissed on the point of admission.

11. As the appeal is dismissed on the point of admission, I.A. No. 6323/2017 is also dismissed accordingly.

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(Sudhir Singh, J)

