HIGH COURT OF TRIPURA
AGARTALA

RFA No.36 of 2019

Smt. Bakul Acharjee & another .....Appellant(s)

Versus

Shri Rakhal Ch. Acharjee & others .....Respondent(s)

For Petitioner(s) : Mr. D.R. Chowdhury, Advocate.

For Respondent(s) : Mrs. S. Deb(Gupta), Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

O R D E R

16/01/2020

This appeal is filed by the original defendants No.1 and 2 to challenge a portion of the preliminary decree passed by the learned Civil Judge (Sr. Division), Court No.4, West Tripura, Agartala dated 24th September, 2019. Relevant portion of which reads as under :

> ***"Issue No.6 & 7 :- In these issues I propose to discuss whether the Plaintiff is entitled to get reliefs as prayed for and whether the parties are entitled to any other reliefs.***
> ***In the facts and circumstances of the instant case I am of the opinion that the Plaintiff is only entitled to the relief of apportionment and partition in his favour of 1/3rd share of the plot of land described in schedule A to the plaint.***
> ***Keeping in view the discussion above and taking into account the facts and circumstances of this instant case, this court of the view that the parties are not entitled to any other relief apart from the apportionment and partition of the plot of land described in schedule A to the plaint as per their respective shares indicated in the record of rights.***
> ***Issue Nos. 6 & 7 is accordingly decided.***

ORDER

In view of the above discussion and findings the instant suit is decreed on contest and it is hereby ordered that the Plaintiff namely Rakhal Chandra Acharjee and the Defendant No.1 Smt. Bokul Acharjee, Defendant No.2 Smt. Chhuti Acharjee and Defendant No.4 Smt. Hena Acharjee are entitled to partition of the plot of land measuring 160 sataks or 8 gandas corresponding to Hal Dag No.5422 recorded in Khatian No.548 described in schedule A to the plaint and to apportionment of their shares as follows :

(a) The Plaintiff Rakhal Ch. Acharjee is entitled to 1/3rd share of the plot of land described in schedule –A to the plaint.

(b) Defendant No.1 & 2 namely, Smt. Bokul Acharjee and Smt. Chhuti Acharjee who are the legal heirs of original recorded owner namely Lt. Nepal Acharjee are jointly entitled to 1/3rd share of the plot of land described in schedule-A to the plaint.

(c) Defendant No.4 Smt. Hena Acharjee who is the legal heir of original recorded owner namely Lt. Jyotsna Acharjee is entitled to 1/3rd share of the plot of land described in schedule-A to the plaint.

The parties to this suit i.e. the Plaintiffs and the Defendants 1, 2 & 4 are hereby directed to partition the plot of land described in schedule A to the plaint amicably amongst themselves without the intervention of this Court within three months from the date of this Judgment, failing which either party shall have right to approach this Court for partition of the suit land amongst themselves with the help of a survey knowing Commissioner."

The suit was filed by the respondent No.1 herein for partition of the suit land. Schedule-A to the plaint pertained to a total of 8 gandas of land. Schedule-B was a land admeasuring 5 gandas 1 kara 1 kranta out of the total 8 gandas of land mentioned in Schedule-A. According to the plaintiff, Schedule-B property was gifted to him and his brother who happened to be the father of defendant No.2 and husband of defendant No.1. The plaintiff and the said two defendants would thus receive equal share out of Schedule-B property. The remaining land of

Schedule-A after subtracting the land portion of Schedule-B, even the plaintiff agreed would go to defendant No.4.

Learned advocates appearing for the present appellants i.e. original defendants No.1 and 2, respondent No.1 i.e. original plaintiff and respondent No.3 i.e. original defendant No.4 all agreed to this formula. Despite this, it appears that the trial Court has erroneously partitioned entire Schedule-A property equally in 1/3rd share between the said 3 groups of persons. Learned advocates appearing for all parties agree that the above mentioned formula of partition would represent the correct legal position.

Under the circumstances, in partial modification of the impugned judgment and preliminary decree, it is provided that (i) the plaintiff Rakhal Chandra Acharjee would be entitled to 1/half share of the plot of land described in Schedule-B to the plaint (ii) the defendants No.1 and 2 namely Smt. Bakul Acharjee and Smt. Chhuti Acharjee the legal heirs of late Nepal Acharjee would be jointly entitled to 1/half share of the plot of land described in Schedule-B to the plaint (iii) the defendant No.4 Smt. Hena Acharjee the legal heir of late Jyotsna Acharjee shall receive the whole of Schedule-A land minus the plot of land referred to in Schedule-B.

Appeal disposed of accordingly. Connected application(s) does not survive.

(AKIL KURESHI), CJ

Dipesh