

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee.

C.O. 2253 of 2017

SAJAY KUMAR MONDAL
VS.
SULEMAN MONDAL & ORS.

For the petitioner: Mr. Partha Pratim Roy,
 Mr. Malay Bhattacharyya.

For the opposite party: None.

Heard on: 20.12.2021

Judgement on: 23.12.2021

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied by the Order No. 165 dated 16/05/2017 passed by the learned Civil Judge (Senior Division) at Bongaon District, 24 Parganas (North) in Title Suit No. 160 of 2000, wherein the learned Trial Court was pleased to reject the prayer made by the defendant nos. 15 and 16 under order XLVII, Rule 1 of Civil Procedure Code for reviewing the preliminary

judgment and decree passed in Title Suit No. 160 of 2000/ Title Suit No. 901 of 2015.

2. The brief background of the present case is that the suit plot no. 1489 measuring 92 Satak originally belonged to Sultan Mondal and Mahabub Mondal and their names were duly published in the R.S.Record of Rights and both Sultan Mondal and Mahabub Mondal have moiety share in the said plot. Mahabub Mondal subsequently died leaving behind defendant nos. 1 to 6 and another son Habibur Mondal died leaving behind defendant nos. 7 to 14. Thereafter the defendant nos. 15, 16 and 17 became owner of 9.9 decimal of land and 5 decimal of land by gradual purchase from the original plaintiff Sultan Mondal and after such sale of 14.90 decimal of land plaintiffs have 46 decimal of land minus 14.90 decimal of land which is equivalent to 31.10 decimal of land in the suit property.

3. On the other hand the defendant nos. 1 to 6 and Habibur Mondal transferred 1.65 decimal of land in favour of the defendant nos. 15-17 and therefore, after such sale the defendant nos. 1-14 who are the heirs of Mahabub Mondal have 46 decimal of land minus 1.65 decimal of land which is equivalent to 44.35 decimal of land in the suit property. The defendant no. 15 has 9.90 decimal of land by way of purchase and the defendant no. 16 has 3.35 decimal of land in the suit plot. After contested hearing the learned Trial Court was pleased to pass a preliminary decree on 20th August, 2004 wherein the learned Trial Court declared that the plaintiffs have jointly 31.10 decimal of

land. The defendant nos. 1 to 14 have 44.35 decimal of land, the defendant no. 15 has 9.90 decimal of land, the defendant nos. 16 and 19 jointly have 3.30 decimal of land and defendant no. 18 has 3.35 decimal of land in the suit plot.

4. The specific case of defendant no. 15/petitioner herein is that the parties to the suit are residing separately by way of amicable partition but learned Trial Court passed the aforesaid preliminary decree based on the fact that the entire area of the suit property is 31.1 decimals of land. He further contended that it appears that a portion of land in the suit property has already been acquired by the State Government for the purpose of construction of metal road and to that extent compensation was also received by the father of the plaintiffs and, therefore, physically the plot of land is much less than the plot as mentioned in the schedule to the plaint. Considering the above aspect the petitioner filed application under Order 47 Rule 1 of the CPC with a prayer to review the preliminary judgment and decree and also filed an application under Order 6 Rule 17 of the CPC for incorporation of fact that a portion of the suit plot has been acquired by the Government. The learned Trial Court has rejected both the applications and being aggrieved by that rejection order the present revisional application has been preferred for setting aside the impugned order.

5. It is also submitted that after passing the aforesaid preliminary decree the plaintiff prayed for appointment of investigation commissioner for making amicable partition of the suit property by metes and bounds in terms of the

extent of ownership as declared in the preliminary decree. It further appears that learned Investigation Commissioner has submitted his report on 05/09/2015 wherein he has allotted 39.45 Satak of land to defendant nos. 1 to 14 out of their 44.35 Satak of land and the rest of 4.9 decimal of land of defendant nos. 1-14 has been left for common passage which also includes the portion occupied for constructing metal Road and he has marked the same as 'A' and 'A1'. Similarly, he has allotted 9.90 Satak of land in favour of the defendant no. 15 which is marked 'B' and 3.30 Satak of land in favour of the defendant nos. 16 and 19 which is marked as 'C' and 3.35 Satak of land in favour of defendant no. 18 which is marked as 'D' and learned Commissioner also allotted 28 Satak of land to plaintiffs out of plaintiffs' total declared land of 31.10 Satak and the rest of 3.10 Satak has been shown by the Commissioner towards common passage which includes land comprised of construction of metal Road and finally he has mentioned that for the purpose of common passage and metal Road he has excluded 8 Satak of land from the share of plaintiff and defendant nos. 1 to 14. It is submitted that said report has not yet been accepted by the Trial Court and it is pending for passing final decree.

6. Be that as it may, the fact remains that the defendants/petitioners herein have not preferred any appeal against the preliminary decree passed by the Trial Court and instead of that they have filed review application in respect of which the impugned order was passed. Needless to mention that the scope of review is limited under Order 47 Rule 1 and it can only be allowed with the

discovery of new and important matter of evidence or mistake or error apparent on the face of the record or for any other sufficient reason or for all. Now if a party is aggrieved by any judgment that it has not been decided as per law, such argument may be agitated in appeal before the superior Court but not in a review petition. The review cannot be an appeal in disguise and a review petition cannot be entertained to reconsider a case. If a case decided after full consideration of the documents and evidence available on record the review cannot be permitted to engage the Court again to decide the controversy already decided. A review cannot be equated with the original hearing or with an appeal. The finality of the judgment delivered by the Court will not be reconsidered by way of review unless a glaring omission or patent mistake or error has been pointed out in the judgment already delivered.

7. Here in the present case I find nothing to interfere with the observation made by the Trial Court that defendant/appellant failed to file any document in support of their contention that 8.50 decimal of land has been acquired by the concerned authority from the predecessor of the plaintiffs and the defendant nos. 1 to 14 nor any new relevant evidence has been shown to have discovered, which can alter the preliminary decree passed by the Trial Court.

8. On perusal of the judgment passed by way of preliminary decree I do not find any error apparent on the face of the judgment which can lead me to conclude that failure of justice has occurred and as such I am of the view that

in the absence of any such error, finality attached to the judgment cannot be disturbed.

9. In this context it is also to be mentioned that “mere erroneous decision” and “error apparent on the face of the record” are not same thing. Error apparent on the face of the record is an error which can be seen by a mere perusal of the record without reference to any other matter. Here in the present case the petitioner/defendant has miserably failed to point out what patent error has been committed by Trial Court in declaring the extent of share of the parties in the suit property by way of passing preliminary decree and as such I find nothing to interfere with the ultimate finding of the learned Trial Court passed vide Order No. 165 dated 16/05/2017.

C.O. 2253/2017 is thus dismissed without any order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)