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C.O. 2292 of 2021

**Sri Bimal Kumar Dey & Ors
Vs
Manirani Dey & Ors**

**Mr. Partha Pratim Roy,
Mr. Anirban Das,**

... For the petitioners.

The subject matter of challenge in this revisional application is against the rejection of a review application, filed by the petitioners in connection with the Misc Case No. 65 of 2016 of learned Civil Judge (Senior Division), 1st Court, Krishnanagar, Nadia.

At the very onset, Mr. Partha Pratim Roy, learned advocate appearing for the petitioners furnishes affidavit of service. It is found to be accompanied by the track report obtained from the official website of the postal authorities.

Nobody appears for the opposite parties either physically or in virtual mode, observing the formalities.

It suggests that despite an opportunity being extended to opposite parties, the same goes unavailed of.

Admittedly, this is a partition suit, wherein preliminary decree has already been granted.

Mr. Roy adverting to the preliminary decree of

referred partition suit submits that the schedule 'A' property measures an area of eleven sataks of land, whereas the operative portion of the impugned judgement and order, passed by Civil Judge (Senior Division), 1st Court, Krishnanagar, Nadia in Title Suit No. 270 of 2012 distributing the areas of land upon assessment by the Court below in connection with the pending partition suit would lead to an improper calculation of the total area, mentioned in A schedule property of the decree.

It is thus grossly contended by Mr. Roy that arithmetical calculation and or assessment of total area of land included in hotchpotch of partition, is erroneous, which is contrary to the area, mentioned in decree pertaining to 'A' schedule property.

Taking resort to the provisions of Section 152 of the Code of Civil Procedure, Mr. Roy submits that clerical or arithmetical mistakes in judgment and decrees may be corrected by the Court either of its own motion or on the application of any of the parties.

The entire exercise thus made by the Court below while granting preliminary decree was to give effect to the preliminary decree in terms of the areas, as assessed by the Court below with all mathematical precision, in the conspectus of the area shown in A schedule property of the preliminary decree already granted in this case. This is a case, in which Mr. Roy

has no objection to the share of other co-sharers in partition suit.

Since an arithmetical mistake as discussed hereinabove, has been sought to be corrected taking resort to Section 152 of the Code of Civil Procedure upon filing a review application without disturbing other portions of the impugned judgment, passed by the trial Court, the same should have been corrected by the Court below doing due adherence to the provisions available under Section 152 of the Code of Civil Procedure.

The impugned order rejecting the review application is thus set aside with a direction upon the Court below to rehear the review application afresh in terms of the discussion made hereinabove, so that the provisions made available in Section 152 of the Code of Civil Procedure, may be strictly complied with.

While endeavouring such exercise, an opportunity of hearing may be given to either of the parties to this case without granting unnecessary adjournment, unless it is extremely unavoidable.

Such exercise may be completed within ten weeks from the date of communication of this order, so that the learned Commissioner already appointed for the purpose may perform his commission work in a most meaningful manner for giving effect to the preliminary decree granted by the Court below.

Petitioners are directed to make communication of this order to the learned court below as well as to the learned advocate appearing in the court below for the opposite parties and the opposite parties.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)