

01.08.2023
Court No.13
Item No.18
AP

FAT 41 of 2015

**Khentabala Mandal
Vs.
Smt. Trishna Roy & Ors.**

Mr. Partha Sarathi Bhattacharyya, Senior Advocate
Mr. Raju Bhattacharyya

... for the Appellant.

Mr. Goutam Thakur

... for the Respondents.

1. The appeal is directed against the final decree dated 6th May, 2014 in Partition Suit No.48 of 2007 passed by the learned Civil Judge (Senior Division), Islampore, Uttar Dinajpur.

2. The brief facts relevant to the case are that a preliminary decree was passed by the learned Judge on 10th December, 2008 in a civil suit for partition being Partition Suit No.48 of 2007.

3. The preliminary decree was never challenged and has attained finality. Based on the said decree, the Court below appointed a Commissioner for partition and submitted a report dated 14th November, 2011.

4. By the Commissioner's report, the property occupied by the parties were reorganized to compensate the other parties and ensure that they received their respondents shares as declared in the preliminary decree.

5. This Court has considered the Lower Court Records and the original report of the Commissioner for partition, filed in the Court below. The demarcation has been clearly indicated in red, green and blue inks. The Commissioner has found illegal occupation by some of the parties and has duly allocated and/or relocated the said parties in other parts of the said R.S. Plot No.353 in Mouza Barhat. The report of the Commissioner for partition was never challenged in the Court below.

6. This Court is satisfied that the appellant as well as the plaintiffs have been granted their respective shares and entitlements as declared in the preliminary decree.

7. In the backdrop of the above, the final decree passed by the Court below is a mere confirmation of the preliminary decree as suggested by the Commissioner for partition.

8. This Court does not find any fault with either the report of the Commissioner or the final decree. At the risk of repetition it is stated that the preliminary decree the report of the Commissioner for partition, have not been challenged by the appellants.

9. Since the final decree is based on the preliminary decree and the report of the Commissioner for partition, the final decree dated 6th May, 2014 calls for absolutely no interference.

10. Accordingly, FAT 41 of 2015 shall stand dismissed.

11. In view of dismissal of FAT 41 of 2015, connected applications, if any, shall also stand dismissed.
12. Interim orders, if any, shall stand vacated.
13. Let the LCR be sent to the Court below as expeditiously as possible by Special Messenger.
14. The cost of Special Messenger shall be put in by the respondents by 4th August, 2023.
15. All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)