

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FAT 185 of 2021

On the death of Sri Saurendra Nath Dey @ Deb his legal heirs are Smt
Sudha Deb and others

-vs-

Parimal Dey @ Deb and others

For the appellants : Mr. Debasish Roy,
Mr. Srinjay engupta,
Mr. Saurav Roy,
Mr. Narattam Acharyya

For the respondents : Mr. Tanmoy Mukherjee,
Mr. K. Raihan Ahmad,
Mr. Rudranil Das.

Heard on : November 19, 2024.

Judgment on : November 19, 2024.

Sabyasachi Bhattacharyya, J.:

1. The present appeal arises from a final decree passed in a
partition suit.

2. The brief facts in a nutshell are that a partition suit was filed by the plaintiffs/respondents, which was decreed in preliminary form, initially without specifying the respective shares of the parties. The said preliminary decree was challenged in appeal. A Division Bench of this Court, sitting in appeal, otherwise affirmed the preliminary decree on merits; however, the matter was sent back to the learned trial Judge only to specifically declare the shares of each of the parties. Upon such remand on the said limited point, by a judgment and decree dated March 14, 2013, a fresh preliminary decree was passed by the trial court whereby the exact shares of the parties respectively were declared.
3. Subsequently, a partition commissioner was appointed, who held such commission and a report was duly filed. The appellants herein, who were the defendants in the suit, cross-examined the Partition Commissioner as well as filed their written arguments.
4. Upon considering the same, the final decree was passed by accepting the Commissioner's report, against which the present challenge has been preferred.

5. Learned counsel for the appellants, at the outset, submits that the cross-examination of the Partition Commissioner categorically shows that there were substantial differences between the suit property and the allotted land. As such, it is argued that the Partition Commissioner could not proceed to file his report and the same could not have been accepted by the learned trial Judge without seeking a modification of the preliminary decree.
6. It is submitted that the trial court also did not advert to the correct method of survey in view of several discrepancies as reflected from the Commissioner's report and his cross-examination.
7. It is argued that the above facts vitiate the impugned judgment and final decree and the same should be set aside.
8. Learned counsel appearing for the plaintiffs/respondents contends that the minor deviation in the area of the suit property, found while taking physical measurement by the Partition Commissioner, from the description of the suit property in the plaint schedule does not vitiate the Partition Commissioner's report or the preliminary decree. It is submitted that since the Partition Commissioner allotted

shares exactly adhering to the shares declared in the preliminary decree in respect of the particular two suit plots, bearing Plot Nos. 345 and 346, the same was rightly accepted by the court below.

9. Insofar as the discrepancies in area raised in arguments now, the same question was raised in the written statement by the appellants and was finally and conclusively decided in the preliminary decree, which was subsequently affirmed by the appellate court on merits, remanding the matter back only to declare the respective shares of the parties.
10. Upon a careful consideration of the Partition Commissioner's report and his cross-examination, we find that the deviance in area admitted by the Commissioner in the cross-examination in respect of the survey was minimal and come within the margin of error befitting a prudent person. Insofar as the differences between the decretal land and the allotted land, the Commissioner, in his report, clearly delineated the exact quantum of difference.
11. It was categorically mentioned by the Partition Commissioner in his report that RS Plot No. 345 was shown in the plaint as 28 decimals and RS recorded area was 26

decimals, but the physical possession was found to be of 23.90 decimals; whereas the plaint area regarding RS Plot No. 346 is 18 decimals and the RS recorded area is 15 decimals, the actual physical possession of the parties was found at the locale to be in respect of 10.20 decimals.

12. Thus, we clearly find that the discrepancies between the measurements as depicted in the plaint, which was the premise of the preliminary decree, varied somewhat, but to a nominal extent from the actual physical measurement of the suit properties. More importantly, the actual physical possession found by the Partition Commissioner was less than the measurement shown in the plaint. As such, there is no scope of encroachment of any third party's property beyond the suit property as described in the schedule of the plaint.

13. We are also conscious of the fact that the Partition Commissioner allotted the respective portions of the parties exactly in terms of their shares as declared in the preliminary decree and as such, he cannot be faulted on the technical ground that there were some discrepancies between the actual land which was found in possession of the parties and the suit property.

14. Insofar as the court having allegedly not adverted to the method of survey is concerned, we cannot accept the arguments of the learned Advocate appearing for the appellants on such count.
15. The Partition Commissioner, in his cross-examination, clearly pointed out the reasons for his having adopted the method of survey which he did. It has been categorically mentioned by the Partition Commissioner in several places that he failed to peg out the decetal property scientifically. He also mentions in his report that as there existed some curves on the concerned arms of the decretal property, no direct measurement could be taken. The Commissioner categorically mentions in his cross-examination that there does not exist any direct measurement from fixed points 'K' to 'M' or 'M' to 'L' in his field book, as there exists obstructions between those fixed points.
16. The Commissioner also clearly mentions in his cross-examination that he had adopted the chain survey method at the time of investigation of the suit property, which is a valid and accepted method of land survey in the State of West Bengal.

17. Thus, we do not find any discrepancy in the Partition Commissioner's report or that the veracity or validity of the contents of the report was shaken during the cross-examination of the Commissioner.
18. As regards the other alleged discrepancies between the schedule property and the RS records, the Court at this stage cannot reopen such issues because those, as rightly argued by the respondents, were finally laid at rest in the preliminary decree as affirmed up to this Court.
19. In view of the above, we do not find any illegality or irregularity in the impugned final partition decree, which has been challenged in the present appeal.
20. Accordingly, FAT 185 of 2021 is dismissed on contest, thereby affirming the judgment and final decree dated September 30, 2019 passed by the learned Civil Judge (Senior Division), Third Court at Paschim Medinipore in Title Suit No. 44 of 2004.
21. There will be no order as to costs.
22. A formal decree be drawn up accordingly.

23. The trial court records be sent down by Special Messenger, the costs of which shall be put in by the respondents within a week from date.

I agree.

(Uday Kumar, J.)

(**Sabyasachi Bhattacharyya, J.**)