

Item No. 203

Ct 22

rup

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 345 of 2023

**Sri Shib Charan Mahato & Ors.
Vs
Sri Niranjana Mahato & Ors.**

Mr. Chittapriya Ghosh.

... for the petitioners.

1. Affidavit of service is filed and taken on record.
2. None appears on behalf of the opposite parties.
3. Learned counsel appearing on behalf of the petitioners advanced his submission.
4. Challenge in this revisional application is the order dated 29th June, 2022 passed in connection with Title Suit No. 02 of 1990, wherein Learned Civil Judge (Senior Division), Purulia rejected the Commissioner's Report dated 10.05.2022 on the ground that report was not filed in consonance with right declaration in preliminary decree and also on the ground that defendant No.5 had no right to file any application for giving effect to preliminary decree, which was passed on 20.01.1994. The Title Suit being No. 02 of 1990 was initiated against the defendant including the

petitioner of this revisional application.

5. Mr. Chittapriya Ghosh, learned counsel on behalf of the petitioners astutely submits that the Learned Judge erred in recording his finding that the defendant No.5/predecessor-in-interest of the petitioners had no right to file application for passing final decree. With respect to Commissioner's Report, Mr. Ghosh, learned counsel in his usual fairness has submitted that the report was not filed in consonance with the share declared in the preliminary decree.
6. The partition suit was decreed *ex parte* in preliminary form declaring the shares of the parties to the suit but thereafter plaintiffs did not take steps for drawing up final decree that is why defendant No.5 filed an application for passing the final decree.
7. Learned Judge recorded his finding that defendant No.5 had no locus to file the application for drawing up final decree.
8. In support of his contention, Mr. Ghosh, learned advocate for the petitioners, has relied on a decision reported in **AIR Online 2009 Ker 5** in the case of **Kattukandi Edathil Krishan Vs. Kattukandi Edathil Valsan**, wherein Hon'ble Apex Court handed down the principle in paragraphs 30, 31 and 33, which runs as follows:

“30. It is clear from the above that a preliminary decree declares the rights or shares of the parties to the partition. Once the shares have been declared and a further inquiry still remains to be done for actually partitioning the property and placing the parties in sep-arate possession of the divided property, then such inquiry shall be held and pursuant to the result of further inquiry, a final decree shall be passed. Thus, fundamentally, the distinction between pre-liminary and final decree is that: a preliminary decree merely declares the rights and shares of the parties and leaves room for some further inquiry to be held and conducted pursuant to the directions made in preliminary decree and after the inquiry having been conducted and rights of the parties being finally determined, a final decree incorporating such determination needs to be drawn up.

31. Final decree proceedings can be initiated at any point of time. There is no limitation for initiating final decree proceedings. Either of the parties to the suit can move an application for preparation of a final decree and, any of the defendants can also move application for the purpose. By mere passing of a preliminary decree the suit is not disposed of. [See: Shub Karan Bubna v. Sita Saran Bubna 9; Bimal Kumar and Another v. Shakuntala Debi and Others¹⁰].

33. We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list

the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.”

9. Therefore, Learned Trial Judge ought not to have raised any issue of locus of the defendant No.5 to file application for passing final decree as it is the duty of the Court to draw up the final decree after preliminary decree is passed.
10. It is true that in preliminary decree, the share of the parties was declared, but according to the Learned Trial Judge the Commissioner's Report was not prepared in consonance with the preliminary decree.
11. Relying on the principle in ***Kattukandi Edathil Krishan (supra)***, Learned Trial Judge ought not to have disputed the locus of the defendant No.5 and for that reason the order assailed in this revisional application stands set aside with a direction upon the Learned Single Judge (Senior Division), Purulia to take up steps even if by appointing a new Partition Commissioner so that the final decree can be drawn up as expeditiously as possible.
12. With the aforesaid observation, the revisional application stands disposed of.
13. Liberty is given to the petitioners to intimate this order to the Learned Trial Court for necessary

information and compliance.

14. Liberty is also given to the petitioner to make necessary correction in the cause title.
15. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.
16. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)