

Item-
4. 03-09-2025

FAT 165 of 2023

sg Ct. 16

Tapan Bera
Versus
Nirapada Bera & Ors.

Mr. Tapan Bera

...appellant in person.

1. Mr. Tapan Bera, appearing in person, has submitted that in spite of issuance of service of notice upon the respondents, the said respondents are not appearing.
2. The report filed by the department shows that the contesting respondents, although have been served with notices, have not entered appearance and are not contesting the proceeding. Insofar as the respondent no.3 is concerned, he has refused to accept the service of notice which shall be deemed to be invalid service.
3. According to him, he was not given opportunity to cross-examine the Partition Commissioner during the trial of the case. He has submitted one written objection against the report of the Partition Commissioner but the same was not considered by the learned Trial Court in passing the final decree. He has also drawn attention of this Court to the order dated 01-09-2023 passed at the time of admission of this appeal. The relevant portions of the said order are quoted hereinbelow:

“It is submitted before us that the partition commissioner did not take into account the other relevant factors while allotting the plots in favour of the parties to the aid suit and, in fact, the property,

which is situated at the rear portion of the joint property accessible through dart road, has been allotted to the plaintiff; whereas the prime portion of the same has been allotted to the defendants/respondents. It is further submitted that an application to seek an opportunity to cross-examine the partition commissioner was taken out, but the Court proceeded to accept the said report and passed the final decree, which deprived him to avail the right recognized in law.”

4. We have considered the materials on record including the relevant judgment. It appears that the learned Trial Judge did not allow the appellant to cross-examine the Partition Commissioner touching the Commissioner’s report. We find that the appellant has certain merits in his submission. The appellant has also submitted that he has been allotted a land which is lower in value in comparison to the land allotted to the other side.
5. However, as the appellant has been able to show that his right of cross-examining the Partition Commissioner has been infringed, we think that we should remand back the case to the learned Trial Court after setting aside the impugned final decree dated 24th February, 2023 passed in T.S. No. 85 of 2011.
6. We request the learned Trial Judge to rewrite the judgment afresh after giving the appellant an opportunity to cross-examine the Partition Commissioner touching the Partition Commissioner’s report.
7. The entire exercise shall be completed within three months from the date of communication of this order.
8. The proceeding before the learned Trial Court shall

commence from the stage of cross-examination of the Partition Commissioner by the appellant.

9. However, if the appellant fails to appear and cross-examine the Partition Commissioner on the date fixed by the learned Trial Court, the judgment under appeal shall be revived as we allow the appeal only on the ground that it has been alleged by the appellant that the Commissioner did not take into account the other relevant factors while allotting the plots in favour of the parties as recorded by the previous Division Bench in the order dated 1st September, 2023, the relevant portion has already been reproduced earlier.
10. TCR shall be sent down before the learned Trial Court immediately.
11. With the aforesaid direction, the appeal is allowed.
12. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Apurba Sinha Ray, J.)