

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

THE HON'BLE JUSTICE MD. SHABBAR RASHIDI

**C.O. 3122 of 2023
Sahadeb Pal & Ors.
Vs.
Joydeb Pal & Ors.**

For the Petitioners	:	Mr. Arindam Das Mrs. Ananya Chakraborty Ms. Dibyanjona Das
For the Respondents	:	Mr. Mohan Kr. Sanyal Mr. Dwaipayan Sanyal Mr. Arunesh Pathak
Hearing Concluded on	:	16.04.2025
Judgment on	:	16.04.2025

Md. Shabbar Rashidi, J. :-

1. The instant revisional application is directed against an order No.63 dated 5th April, 2022 passed in Partition Suit No.250 of 2014.
2. It is the case of the petitioners that the petitioners/plaintiffs filed a partition suit being Title Suit No. 250 of 2014. It was the case of the plaintiffs thereon that the specific shares in the suit properties devolved upon the plaintiffs by several purchase deeds from different sharers in the said properties. Similarly, defendants also acquired shares in the suit properties by a number of sale deeds executed by its erstwhile owners. The suit was decreed on contest against defendant Nos. 1 to 10 and 15 and ex-parte against the rest of

the defendants in the preliminary form by the judgment and order dated June 29, 2016.

The operating portion of the judgment dated June 29, 2016 reads as follows:-

“that the suit be and the same is decreed on contest against defendants Nos. 1 to 10 and 15 and ex-parte against the rest in preliminary form in favour of plaintiffs however without any order as to costs.

Plaintiffs Nos. 1 to 3 do get a joint decree of 15.75 decimal of land in the suit plot. Plaintiffs Nos. 4 and 5, taken as single unit, do get a decree in respect of 4.75 decimal of land. Plaintiffs Nos. 6 to 8 do get a decree in respect of 8.74 decimal of land and defendants Nos. 1 to 10 jointly do get a decree in respect of rest of the suit plot i.e. 9.76 decimal of land.

The parties hereto are directed to get the suit property amicably partitioned by metes and bounds amongst them within 3 (three) months from the date of order, failing which, either of the parties would be at liberty to approach the Court for execution of the decree by appointment of a Ld. Advocate Commissioner by metes and bounds following the established rules of partition and the said Advocate Commissioner will effect the partition making allotment keeping the respective possession of the parties as far as practicable.”

3. Since the parties were granted liberty to amicably partition the suit properties by metes and bounds in terms of the shares declared in the preliminary decree and such amicable partition could not be effected, the plaintiffs/petitioners filed an application before learned Trial Court for appointment of survey knowing Partition Commissioner to carve out separate shares of the plaintiffs/petitioners in the suit property in terms of their declared shares in the preliminary decree.

4. In pursuance of such petition, a Partition Commissioner was appointed by learned Trial Court. Writ of commissions was issued accordingly. Learned Partition Commissioner, upon conducting survey of the properties involved in Partition Suit No. 250 of 2014 submitted his report along with a drawn-to-scale map showing the allotment of the shares of the petitioners/plaintiffs on May 20, 2017.

5. Defendants/opposite party Nos. 1 to 10 and 15 took out an exception to the reports so submitted by learned Partition Commissioner. Learned Trial Court proceeded to consider the objection so raised by the aforesaid defendants. The Partition Commissioner was cross-examined on behalf of the objecting defendants in respect of objections raised on their behalf.

6. By the impugned order No. 63 dated April 5, 2022, learned Trial Court, upon consideration of the objections raised on behalf of the defendant Nos. 1 to 5 and 10 as well as the cross-examination of learned Partition Commissioner rejected the report submitted on February 20, 2017.

7. The aforesaid order directing rejection of the Commissioner's report has been challenged in this revisional application.

8. It was submitted on behalf of the petitioners that the learned Trial Court committed error in not accepting the report submitted by learned Commissioner. The aforesaid order was passed without appreciation of the report and the evidence adduced by the learned Commissioner. Learned Trial Court failed to exercise its jurisdiction in not appreciating the report submitted by the learned Commissioner.

9. At the time of hearing of the instant revisional application it appears from the impugned order that the learned Trial Court while passing the impugned order rejected the report submitted by learned Partition Commissioner. It was held that it appeared to the learned Trial Court that the Commissioner's report was liable to be rejected on the grounds set forth by defendant nos.1 to 10 and 15 in their written objection.

10. The learned Commissioner failed to take into consideration a pathway maintained by local Panchayat situated in the middle of the suit property and the house of the defendants was situated on the eastern side of the suit land. The aforesaid pathway was the only way for access to their house. It was also pointed out that the learned Commissioner did not take a fixed point for conducting the survey and submitted an erroneous report. The learned Commissioner also came to a wrong finding on the point of valuation of the suit properties.

11. Such objection was taken into consideration by the learned Trial Court and the impugned order was passed.

12. At the time of hearing, learned advocate appearing for the petitioners did not point out any error in arriving at the conclusion made in the impugned order and the ground of objection raised on behalf of the defendant nos.1 to 10 and 15.

13. Learned advocate appearing on behalf of the opposite parties referred to the cross-examination of the learned Commissioner during the hearing of the objection on the report of the Commissioner.

14. In such circumstances, since the petitioners have not been able to justify that the learned Trial Court committed error in exercising its jurisdiction or failed to exercise jurisdiction vested in it, in deciding the objection raised by the opposite party nos.1 to 10 and 15 as against the Commissioner's report, I do not find any reason to interfere with the impugned order passed by the learned Court below and the same is hereby affirmed.

15. The petitioners/plaintiff will be at liberty to apply for fresh survey for the purpose of preparation of final decree following the preliminary decree passed in the Partition Suit.

16. Learned Trial Court shall, if such prayer is made on behalf of the petitioners/plaintiff, consider and pass appropriate order in accordance with law.

17. With the above observation/direction, C.O. 3122 of 2023 stands disposed of.

18. Pending applications, if any, stand disposed of.

19. There shall be, however, no order as to costs.

20. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(MD. SHABBAR RASHIDI, J.)

KS AR(Ct.)