

(2013) 01 PAT CK 0016
In the Patna High Court
Case No : First Appeal No. 344 of 1979

Janardan Tewary and Others

APPELLANT

Vs

Jagdish Tewary and Others

RESPONDENT

Date of Decision : 03-01-2013

Acts Referred:

Citation : AIR 2013 Patna 93

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Advocate : Archana Meenakshee, for the Appellant;

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—The defendant Nos. 7 to 13 have filed this First Appeal against the judgment and final decree dated 19.01.1979 passed by the learned 6th Additional Subordinate Judge, Siwan in Partition Suit No. 16 of 1951. It appears that the plaintiffs-respondents filed the aforesaid partition suit for partition of the suit property. The suit was decreed initially by compromise. According to the compromise, Pleader Commissioner was to be appointed for preparing takhta. Pleader Commissioner was appointed and report was submitted by him on 07.06.1957. The parties filed their respective objections to the said Pleader Commissioner's report. Subsequently, the Pleader Commissioner was directed to submit supplementary report. On 22.04.1959, the Pleader Commissioner filed supplementary report which was confirmed on 18.01.1960. Against the said judgment and final decree, the defendant Nos. 1 to 5 and 6 filed Civil Appeal No. 255 of 1960. The said appeal was dismissed by the High Court, Patna on 04.08.1966. While dismissing the appeal, the High Court directed the trial court to prepare a separate takhta of defendant Nos. 1 to 5 from defendant Nos. 7 to 13 with respect to khata Nos. 57 and 58. Pursuant to the said direction, another Pleader Commissioner was appointed. The Pleader Commissioner separated the takhta for defendant Nos. 1 to 5 and submitted his report on 05.09.1976. Against the said report, the appellants who were defendant Nos. 7

to 13 filed objection. After considering the said objection, the impugned judgment was passed.

2. The defendant Nos. 7 to 13, the appellants filed objection mainly contending that the classification made by the Pleader Commissioner was not correct and accordingly, the valuation is also not correct. The other contention of the appellants was that the defendant Nos. 1 to 5 have received the compensation with regard to portion of plot No. 644 which was acquired by the State of Bihar but the said land has been allotted in the takhta of defendant Nos. 7 to 13. Likewise, the R.S. Plot No. 2335 was given in zurpesgi by the defendant Nos. 1 to 5 which, have also been given in the share of defendant Nos. 7 to 13.

3. It appears that the defendant Nos. 1 to 5 filed rejoinder to the said objection filed by the defendant Nos. 7 to 13.

4. The learned counsel, Mrs. Archana Meenakshee appearing on behalf of the appellants submitted that the trial court has not considered the objections of the appellants. According to the learned counsel, two sale deeds were filed before the trial court to show that the Pleader Commissioner has not correctly valued the suit lands comprised within khata no. 57. By the sale deeds, the adjacent plot was sold for Rs. 460 per kattha whereas the Pleader Commissioner has valued the suit land at Rs. 360 per bigha. The learned counsel further submitted that the defendant Nos. 1 to 5 have been allotted entire plots comprised within plot No. 403, 453, 1237, 2515 and 2706 without giving any part of the said plots to the defendant Nos. 7 to 13. On these grounds, the learned counsel submitted that the impugned judgment and final decree is liable to be set aside and the matter may be remanded back for preparation of fresh takhta.

5. As stated above, nobody appeared on behalf of the respondents.

6. In view of the above contentions of the learned counsel for the appellants, the only point arises for consideration in this case is as to "whether on the grounds raised by the appellants, the impugned judgment and final decree is liable to be set aside?"

7. It may be mentioned here that the plaintiffs-respondents filed the aforesaid partition suit claiming half share in the suit property. The said suit was decreed and the appeal filed by the defendant Nos. 1 to 5 before the High Court against the final decree was dismissed. The High Court directed that out of the takhta allotted to the defendants, the takhta of defendant Nos. 1 to 5 may be separated from the takhta of defendant Nos. 7 to 13. It appears that the share of the defendant Nos. 1 to 5 is only 1 Anna 4 Pai out of the total share allotted in favour of the defendants. From perusal of the report of the Pleader Commissioner, it appears that in spite of several dates given by the Pleader Commissioner, nothing was produced before the Pleader Commissioner regarding the valuation or classification of the lands by the appellants. The defendant Nos. 1 to 5 only filed the judgment of High Court passed in Appeal No. 255 of 1960. In the said judgment, the High Court had directed to separate the takhta of defendant Nos.

1 to 5 regarding their 1 Anna 4 Pai only. Therefore, the classification made earlier by the Pleader Commissioner which was confirmed by the High Court was taken into consideration by the Pleader Commissioner and the same was classified accordingly. The parties also did not produce any evidence before the Pleader Commissioner regarding valuation of the land. Moreover, the submission of the learned counsel that the adjoining land to khata No. 57 has been sold at Rs. 460 per kattha is concerned, it may be mentioned here that because of less valuation given by the Pleader Commissioner to the suit property will not vitiate the report on that ground alone unless the appellant show that because of less valuation, any prejudice has been caused to the appellant because from perusal of the Pleader Commissioner's report, it appears that most of the lands are comprised within khata No. 57. All the plots have been valued by the Pleader Commissioner. No evidence has been adduced by any of the parties to show that the classification made by the Pleader Commissioner is wrong. It may be mentioned here that the earlier Pleader Commissioner's report which was confirmed was upheld by the High Court. So far not giving share in some of the plots to the appellants is concerned, it may be mentioned here that there are as many as 47 plots in Schedule II in khata No. 57. The share of defendant Nos. 1 to 5 is only upto 1 Anna 4 Pai. Therefore, some of the plots have been given in its entirety to the defendant Nos. 1 to 5. While allotting the takhta to the defendant nos. 1 to 5, the Pleader Commissioner has considered the compactness and also possession of the defendant Nos. 1 to 5. For example, it may be mentioned here that the Pleader Commissioner found that plot No. 2515 of khata No. 57 was in possession of grandfather of defendant Nos. 1 to 5.

8. From perusal of the impugned judgment and final decree, it appears that the trial court has considered all the questions raised by the appellants and did not accept the same on cogent grounds.

9. In the case of Jugeshwar Singh v. Rijhan Singh, AIR 1938 Patna 104, a Division Bench of this court has held as follows:

... The Subordinate Judge when he makes the final decree considers, first, the report of the Commissioner; the Commissioner has been to the spot, has heard the contentions of the parties and the evidence which the parties produced before him and then to the best of his ability directed the partition by metes and bounds, taking into consideration the element of compactness, the element of equality, the nature of the land to be divided and many other circumstances which he must take into account and then submits his report to the Subordinate Judge. It is then open to any party, who is dissatisfied with the takhta allotted, to ask the Subordinate Judge to disregard the report of the Commissioner; and the Subordinate Judge again reviews the facts and corrects the award of the Commissioner. Therefore a first appeal to this Court from the order of the Subordinate Judge is really in the nature of a second appeal in which only questions of law and principle can be considered. It is quite impossible for the Court to go down to the area in question, inspect the land, hear the various

objectors and in fact review the decision of the Commissioner on fact. The power to review the decision of the Commissioner on the facts is a matter for the Subordinate Judge, and his view of the facts ought to be final as a first appellate decision on fact. The High Court should only interfere when it is shown that the Judge in his decision has gone wrong on some question of principle in making the final allotment and in drawing up the decree....

10. It may be mentioned here that another Division Bench of this court in the case of Ambika Bhawani Devi Vs. Sm. Gouri Kumari Devi, held that where a Commissioner is appointed to effect partition, the power to review his decision on the facts is a matter for the Subordinate Judge who passed the final decree, and his view of the facts ought to be final, unless some question of principle in making the final allotment and drawing up the decree is involved.

11. On the contrary, no decision has been cited before this court by the appellants. Therefore, the Division Bench decision is binding on this court. The points raised by the learned counsel for the appellants are essentially question of facts which have been considered by the Pleader Commissioner as well as by the trial court. Therefore, in my opinion, the points raised by the appellants have got no merit in this present appeal and on those grounds, the impugned judgment and final decree cannot be set aside. In the result, I find no merit in this First Appeal and accordingly, this First Appeal is dismissed. The impugned judgment and final decree is hereby confirmed. No order as to cost.