

F.D. No. 12/2012Ramesh..Vs.. Mahesh & oths.

Order below the Commissioner Report vide Exh. 31.
(Passed on 12.09.2014)

1] The plaintiff/decreed holder has filed the Final Decree proceeding against the J.Drs. for the execution of decree dated 25.08.2011 in respect of the partition & separate possession of his 1/18th share in the house property. It reveals from the record that the Commissioner for effecting the partition & separate possession as per the decree was appointed vide order dated 26.06.2013. The Court Commissioner visited the suit property and submitted its report at Exh. 31. As per the Commissioner Report, the suit plot is 15840 Sq. Ft. in area which is East facing consisting of two buildings i.e. main house (first building) situated on 2/3rd portion of the plot, whereas second building (Out House) situated on 1/3rd back side portion of the suit plot, and first building was constructed in uneven area by leaving approximately 40 ft. X 80 ft. front open space, so it was difficult to partition the suit property and to allot 1/18th share to the decreed holder in suit property from comprising plot & residential two buildings by metes and bounds.

2] The Commissioner has further mentioned in the report that as per the request and suggestions of all the parties, the partition of the suit property to be effected in three equal portions i.e. the Portion-A- admeasuring area 5130 Sq. Ft. of the suit plot towards Northern side

(28.5 Ft. X 180 Ft.) to be allotted to the legal heirs of Babulal Ramchandra Gupta, the Portion-B-admeasuring area 5130 Sq. Ft. of the suit plot i.e. a middle portion (28.5 Ft. X 180 Ft.) to be allotted to the legal heirs of Jeevanlal Ramchandra Gupta and Portion-C-admeasuring area 5220 Sq.Ft. of suit plot towards Southern side (29 Ft. X 180 Ft.) to be allotted to the legal heirs of Gaurishankar Ramchandra Gupta including the portion of buildings coming in their respective portions, and it is shown by red ink in Sanctioned Map and City Survey Map of suit plot, and therefore, the said proposal is acceptable. He has opined that it is difficult to further partition and demarcate share of each person by metes & bounds in the portions 'A', 'B' & 'C' and buildings standing thereon between the respective legal heirs i.e. decree holder and all J.Drs.

3] The hearing was taken on the said Commissioner Report. Heard, learned Advocate for the plaintiff/decreed holder and learned Advocates for the J.Drs. No.1 to 3 and 9,12,13,14,15,16. The learned Advocate for the J.Drs. No. 1 to 3 and learned Advocate for J.Drs. No. 9, 12 to 16 have filed the pursis at Exh. 40 & 41, and thereby they have accepted the Commissioner Report and given no objection for effecting the partition as per the said report. It is submitted that other J.Drs. are absent and matter was proceeded ex-parte against the J.Drs. No. 4 to 8 & 10,11. It is submitted that in a decree of partition, all the parties who are getting share in suit property are the decree holders though they have been joined as J.Drs. It reveals from the decree that the suit was

filed by Ramesh Gupta i.e. one of the legal heir of the deceased Jeevanlal Gupta against the defendants/J.Drs. No. 1 to 17, and as per decree, the plaintiff/decreed holder has $1/18^{\text{th}}$ share, and that share has to be partitioned and separately delivered to him.

4] However, as per the Commissioner Report it was difficult to divide the suit property and to hand over the $1/18^{\text{th}}$ share in it to the plaintiff, so he has suggested for the three equal shares in between the legal heirs of the deceased Babulal Gupta, deceased Jeevanlal Gupta & deceased Gaurishankar Gupta. The J.Drs. No. 1 to 7 are the legal heirs of deceased Babulal Gupta. The J.Dr. No. 8 Gaurishankar was shown to be deleted. Decreed holder and J.Drs. No. 13 to 16, and mother of J.Dr. No. 17 are the legal heirs of deceased Jeevanlal Gupta and J.Drs. No. 9 to 12 are the legal heirs of deceased Gaurishankar Gupta. None of the J.Drs. have objected the said Commissioner Report by filing the objection before the Court. Decreed holder, J.Drs. No. 1 to 3, J.Drs. No. 9 & 12 to 16 have no objection to execute the decree as per the Commissioner Report, also they have no objection to appoint the Commissioner Adv. Vikas L. Jaiswal again as Court Commissioner for effecting the partition & separate possession of the suit property as per the proposal suggested in his report.

5] It is submitted that being it is a decree for partition & separate possession, all the Claimants/J.Drs. are required to pay the Court fees on their respective share for the partition & separate

possession of the suit properties as per the proposal submitted by the Commissioner. As per the Commissioner Report, it is difficult to partition and give separate possession of 1/18th share to the plaintiff/decreed holder. So, he has suggested, the portion-B as shown in the map by red ink of the suit property be allotted to the decree holder, J.Drs. No. 13 to 16 and J.Dr. No. 17 being the legal heirs of the deceased Jeevanlal Gupta. It is submitted that J.Drs. No. 13 to 16 & 17 have not paid the Court fees on their respective share in the suit properties. Moreover, the J.Drs. No. 1 to 7 i.e. legal heirs of deceased Babulal Gupta and J.Drs. No. 9 to 12 i.e. legal heirs of deceased Gaurishankar Gupta have not paid the Court fees on their respective shares. Thus, it is necessary to appoint the Court Commissioner Mr. V. L. Jaiswal Advocate. for execution of the said decree for partition & separate possession as suggested in the Commissioner Report vide Exh. 31 subject to payment of the Court fees by the J.Drs. No. 1 to 17. Under these facts & circumstances, the Commissioner Report vide Exh. 31 is required to be accepted, and I proceed to pass the following order.

ORDER

- 1] The Commissioner Report vide Exh. 31 is hereby accepted.
- 2] The Advocate Mr. V. L. Jaiswal is appointed as a Court Commissioner for effecting the partition & separate possession of suit properties as per the Commissioner report vide Exh. 31 in between the

legal heirs of deceased Babulal Gupta, deceased Jeevanlal Gupta & deceased Gaurishankar Gupta i.e. the Decree Holder & J.Drs. No. 1 to 17, subject to the payment of Court fees on the respective shares by the J.Drs. No. 1 to 17. Writ of Court Commissioner be issued after the payment of Court fees by the J.Drs. No. 13 to 16 & 17, by J.Drs. No. 1 to 7 and by J.Drs. No. 9 to 12,.

3] The decree holder is directed to deposit the Court Commissioner Fees of Rs. 5,000/- towards the execution of decree as per the Commissioner Report, after the compliance of Court fees by J.Drs.

4] The Court Commissioner shall execute the decree for partition & separate possession as per the proposal given in the Commissioner Report within 30 days from the date of receipt of writ and submit his report.

Nagpur.
Dt. 12.09.2014

(D. P. Ragit)
4th Jt. Civil Judge (Sr.Dn.), Nagpur.