

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.87/2024

Shri Manas Bhattacharjee, age 51 years, son of Madhusudan Bhattacharjee, resident of Abhoynagar, Mahila Ashram Road, P.O.-Abhoynagar, P.S.-New Capital Complex, District-West Tripura, PIN-799005.

..... Defendant-Petitioner (s).

V E R S U S

1. Shri Dipankar Bhattacharjee, Son of Late Brajendra Ch. Bhattacharjee, resident of Abhoynagar, Mahila Ashram Road, P.O.-Abhoynagar, P.S.-New Capital Complex, District-West Tripura, PIN-799005.

.....Plaintiff-Respondent (s).

2. Smti. Jayanti Bhattacharjee, Wife of Shri Keshab Chakraborty, D/O. Late Brajendra Ch. Bhattacharjee, resident of Ramnagar Road No.4, P.S.-West Agartala, District-West Tripura, PIN-799002.

3. Shri Pintu Bhattacharjee, Son of Late Brajendra Ch. Bhattacharjee, resident of Abhoynagar, Mahila Ashram Road, P.O.-Abhoynagar, P.S.-New Capital Complex, District-West Tripura, PIN-799005.

.....Proforma Defendant-Respondent (s).

For Petitioner(s) : Mr. Saktimoy Chakraborty, Sr. Advocate,
Mr. Suman Bhattacharjee, Advocate,
Mrs. Pinki Chakraborty, Advocate,
Ms. Mampi Chakraborty, Advocate.

For Respondent(s) : Mr. Dipak Deb, Advocate,
Mr. Saptarshi Pal, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **02nd April, 2025.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Saktimoy Chakraborty, learned senior counsel assisted by Mr. Suman Bhattacharjee, learned counsel appearing for the defendant-petitioner and Mr. Dipak Deb, learned counsel appearing for the plaintiff-respondent No.1.

2. Under challenge is the order dated 25.07.2024 passed by the learned Civil Judge (Senior Division), Court No.2, West Tripura, Agartala in case No.T.S. 96 of 2020 by which the report of the Survey Commissioner appointed vide order dated 07.08.2023 by the learned trial Court has been rejected and the learned trial Court has directed the Sub-Divisional Magistrate, Sadar, West Tripura to constitute a team of 3(three) members who are expert in the field and serving under him and to suggest their name for the purpose of appointing them as the Survey Commissioners to demarcate the suit land of this case. The operative part of the order of the learned trial Court is extracted hereunder:

"Hence, from the above it is crystal clear which is the suit property here and what was the intension of the Hon'ble High Court behind passing such direction in this regard. There remains no room for doubt after reading the para Nos. 9 and 10 as quoted above that the common pathway which is recorded as one ganda of land in C.S. Khatian No. 20952 and R.S. Khatian No. 550 which is the suit land here.

Now, admittedly if the report of the survey commissioner is considered with reference to the pathway mentioned in the said Partition Deed only then there is no requirement of taking measurement of all the plots of the Partition Deed as it has been found by simple measurement of the existing pathway that there exist title bit more then $\frac{1}{2}$ ganda of land in the said pathway as argued by learned counsel for the defendants. But, in this case the said contention of the learned counsel for the defendants cannot be accepted for the simple reason is that it is not the case of the plaintiff that the suit pathway is $\frac{1}{2}$ ganda of land as mentioned in the Partition Deed. Rather, the case of the plaintiff is that the suit land is the land recorded in the C.S. Khatian No. 20952 and R.S. Khatian No. 550 which is one ganda of land i.e. 12' x 72' in breath and length and the defendants have constructed their building by encroaching a portion of the said pathway. Therefore, if the matter is considered from the point of view whether the defendant Nos. 1 & 2 are constructing their building by encroaching the land recorded as pathway in the C.S. Khatian No. 20952 and R.S. Khatian No. 550 or not which is the suit land here then obviously taking measurement of all the plots of the Partition Deed is required which will make the picture very clear.

It is a matter of common sense that without taking measurement of either all the plots of the Partition Deed or the land of Madhusudhan Bhattacharjee which he got under the said Partition Deed or the land recorded in the C.S. Khatian No. 20952 and R.S. Khatian No. 550 it cannot be ascertained whether the defendant Nos. 1 & 2 are constructing their building encroaching the suit land or not. But, the survey commissioner did not do any of the said act. Only in either of the said ways it can be traced out whether the defendant Nos. 1 & 2 are constructing their building encroaching any portion of the suit land or not as alleged by the plaintiff.

It is also admitted fact that the Hon'ble High Court of Tripura nowhere in the said order expressly directed for taking measurement of the all

the plots of the Partition Deed but the question here is without taking measurement of either all the plots of the Partition Deed or the land of Madhusudhan Bhattacharjee how it can be ascertained whether any portion of the suit land has been encroached by the defendants or not.

The Hon'ble High Court after examining all the materials placed before it passed the said direction having found that by a simple demarcation of the property of the parties the matter in dispute can be resolved. I am also of the opinion that if the demarcation of the property of the parties is made properly then the dispute between the parties may be resolved in this case. Now, the question is how it can be done. As noted above, in three ways the said fact can be unearth. Firstly, obviously by taking measurement of all the plots of the Partition Deed including the land recorded in C.S. Khatian No. 20952 and R.S. Khatian No. 550. It is needless to say that if this exercise is taken up then the entire picture will be cleared. However, if taking the measurement of all the plots of the Partition Deed is not possible as argued by the learned counsel of the defendants then by taking measurement of the land of Madhusudhan Bhattacharjee which he got under the said Partition Deed with the land recorded in the C.S. Khatian No. 20952 and R.S. Khatian No. 550 the said fact can be ascertained. If this exercise is also taken up then undoubtedly it would come out whether the defendants are constructing their building encroaching any portion of the suit land or not. Thirdly, if that is also not possible then by mere taking the measurement of land recorded in the C.S. Khatian No. 20952 and R.S. Khatian No. 550 under C.S. Plot No. 9173/49952, R.S. Plot No. 2549 it can be traced out whether the defendants are constructing their building encroaching any portion of the suit land or not.

But as it appears from the cross-examination of the survey commissioner that he has neither taken the measurement of the land of Madhusudan Bhattacharjee nor the other parties of the said Partition Deed. Furthermore, he has also not taken the measurement of the entire land recorded in C.S. Khatian No. 20952 and R.S. Khatian No. 550. Therefore, neither he has followed the order dated 07.08.2023 of this Court nor it can be said that the report submitted by the commissioner is in terms of the order of the Hon'ble High Court and the same is not going to serve any purpose in determining the real question in dispute between the parties. Here basically this exercise has been done as per the observation made by the Hon'ble High Court in case No. CRP 35 of 2022. Therefore, it has to be seen whether the report submitted by the survey commissioner is consistent with the observation made by the Hon'ble High Court in the said judgment or not. This Court cannot take any decision or pass any order by over looking the observation made by the Hon'ble High Court in the said case. And even if, any order was passed contrary to the said observation made by the Hon'ble High Court and acting upon it any report is also submitted, the same cannot be taken into consideration as this Court is legally bound by the decision of the appellate Court. Therefore, I find no force on the submission of the learned counsel for the defendants which he made in this regard.

As noted above, the Hon'ble High Court has observed that suit land is the land recorded in the C.S. Khatian No. 20952 and R.S. Khatian No. 550 i.e. 1 one ganda of land measuring 12' x 72' in breadth and length and not ½ ganda as mentioned in the said Partition Deed. It seems that the survey commissioner could neither understand the order dated 07.08.2023 of this Court properly nor he could follow the observation made by the Hon'ble High Court in this regard in CRP 35 of 2022 and accordingly, he demarcated the suit land with reference to the Partition Deed only which is not the suit land here. Hence, on this ground alone the report of the survey commissioner is liable to be rejected. On further scrutiny of the report of survey commissioner, it can be seen that, he has neither taken the measurement of all the plots of the Partition Deed nor he has taken the measurement of the entire land as recorded in the recorded in the C.S. Khatian No. 20952 and R.S. Khatian No. 550. The survey commissioner also did not mention in his report

that taking measurement of all the plots of the Partition Deed is not possible in this case as argued by the learned counsel of the defendants. Hence, for this reason also I find no justification to accept the instant report of the survey commissioner.

In view of the above discussions, I find no scope to accept the instant report of the survey commissioner. Thus, the report dated 28.11.2023 of the survey commissioner is hereby rejected.

Admittedly, as per the direction of the Hon'ble High Court, the said exercise should have been completed within one month. But in this case, as record speaks that the same could not be done for various reasons. Firstly, the survey commissioner was appointed vide Order dated 20.09.2022 and the survey commissioner submitted his report all most after six months of the said order on 27.03.2023. Thereafter, written objection was filed against the said report from the side of plaintiff and after hearing both the sides on 07.08.2023 the said report was rejected and on that date again fresh survey commissioner was appointed. But, this time also the survey commissioner has not conducted his survey work properly. Therefore, there is no point to appoint the same person as survey commissioner in this case again.

Now, in the written submission the Ld. Counsel of the plaintiff made a prayer to appointing a fresh survey commissioner from the Revenue Department, Govt. of Tripura.

In this regard, considering the peculiarity of the matter involved in this case I am also of the opinion that if the demarcation of the suit land is done by the officers of the Revenue Department then it may put an end to the matter in dispute between the parties.

Accordingly, the Sub-Division Divisional Magistrate, Sadar, West Tripura is directed to constitute a team of three members who are expert in this field and serving under him and to suggest their name for the purpose of appointing them as the Survey Commissioners to demarcate the suit land of this case.

The Sub-Division Divisional Magistrate, Sadar, West Tripura is also asked to inform this Court on the next date about the one day salary of said officers alongwith head of account for crediting the same by the plaintiff.

Send a copy of this order to the SubDivision Divisional Magistrate, Sadar, West Tripura for information and compliance.

Fix 06.08.2024 for report of SDM, Sadar."

3. Mr. S.M. Chakraborty, learned senior counsel for the petitioner has drawn the attention of this Court to the prayer made by the plaintiff/respondents in Title Suit No.96 of 2020 instituted for declaration and for permanent injunction along with mandatory injunction as per the provisions of Section 34 of the S.R Act. The prayer of the plaintiff is extracted hereunder:

“(i) A Decree declaring that, the suit pathway as described in Schedule C of the plaint is the joint property of the Plaintiff, the Defendants & the Proforma Defendants having equal right of enjoyment & possession of the suit pathway.

(ii) A declaration that, the suit pathway is consists of the land measuring 1 ganda as has been recorded in CS Khatian no. 29052, RS Khatian no. 550, under CS Plot no. 9173/49952, RS Plot no. 2549, but not consist of ½ ganda of land as has been written in the Partition Deed.

(iii) A declaration that, the Defendants have got no right to make and create any obstruction by creating any building construction or any other construction in any portion of the suit pathway.

(iv) A Decree declaring that, the construction works of the building so far has been made by the Defendants in the portion of the suit pathway is illegal void & is liable to be demolished.

(v) A Decree for Permanent Injunction restraining the Defendants and his persons & agents from making any kind of constructions over any portion of the suit pathway and also to restrain the Defendants to continue the construction works or to proceed with any further construction works over the suit pathway.

(vi) A Decree for Mandatory Injunction directing the Defendants to demolish the construction works of the building over the suit pathway illegally unauthorisedly made by them within specified period failing which to demolish the building made by the Defendants over the suit land by enforcement of the Decree.

(vii) A Decree for such other relief or reliefs in which the Plaintiffs are entitled as per pleadings.

(viii) A Decree for Cost.”

4. Schedule-C described in the plaint is claimed to be the ejmali pathway for demarcation of which survey commissioner has been appointed in pursuance to the direction passed by this Court in CRP No.35 of 2022 dated 5th August, 2022 which arose out of the judgment dated 31st March, 2022 passed by the learned Additional District Judge, Court No.2, West Tripura, Agartala in Miscellaneous Appeal No.11 of 2021 by which the order dated 5th April, 2021 passed by the learned Civil Judge, Sr. Division, Court No.2, West Tripura, Agartala in Civil Misc.(Inj.) No.70 of 2019 arising out of the same T.S. No.96 of 2020 in the nature of an injunction upon the defendants/petitioners herein for making further construction on the encroached portion of the suit pathway or any portion of the suit pathway until further order was vacated. The learned Court while disposing of the civil revision petition by the order dated 5th August, 2022 proceeded to observe as under:

“In view of above observations and discussions, this Court is of the considered opinion that this petition is disposed of giving liberty to both sides as desired by them before this Court for filing appropriate application before the Court below for finding the property by way of demarcation in terms of their partition deed by metes and bounds. In the event, on filing such application, the Court below shall appoint a commissioner and obtain a report. This exercise shall be completed within a period of one month from

the date of filing of such application by both the parties. Till then, the respondents herein shall not proceed with the construction. The Court below shall pass appropriate order after obtaining the report from the commissioner at the earliest. It is needless to say that both the parties shall cooperate in the above exercise. They can be present at the time of inspection by the commissioner.”

5. The survey commissioner was appointed to identify the ejmali pathway as per the partition deed. Thereafter, the report of the survey commissioner received on 27.03.2023 for demarcation of the ejmali pathway was discarded by the order dated 7th August, 2023 (Annexure-10) as it was not clear as to the portions of the plot and the suit property as per the partition deed as ordered by this Court in CRP No.35 of 2022. The same survey commissioner undertook the exercise once again pursuant to the directions of the learned Trial Court vide order dated 7th August, 2023 and submitted a report received on 28.11.2023 before the learned Trial Court (Annexure-11) which correctly reveal the measurement of the suit pathway in terms of the directions of the learned Trial Court in line with the directions passed by this Court in CRP No.35 of 2022.

6. Though the survey commissioner's report was exactly in terms of the order passed by this Court in CRP No.35 of 2022 and the directions passed by the learned Trial Court in the order dated 07.08.2023, on the objection of the plaintiff, the same has been discarded by the impugned order dated 25.07.2024 by the learned Trial Court on wholly incorrect reasonings. The learned Trial Court has thereafter proceeded to direct the Sub-Divisional Magistrate, Sadar, West Tripura to constitute a team of three members who are expert in this field and serving under him and to suggest their names for purpose of appointing them as survey commissioner to demarcate the suit land of the case.

7. It is submitted that the learned Trial Court has completely misunderstood the mandate of the survey commissioner as required to be followed in terms of the order of this Court in CRP No.35 of 2022 and the court's own directions contained in the order dated 07.08.2023. It is submitted that if the demarcation of the ejmali pathway is undertaken as per the description of the suit land in Schedule-C of the plaint described by the plaintiff and not as per the partition deed (Annexure-13) as directed by this Court in CRP No.35 of 2022, then it would be completely misdirected and add to the confusion as to the exact boundaries of the ejmali pathway which is the bone of contention. Meanwhile the defendants/petitioners continue to suffer as in terms of the order dated 5th August, 2022 in CRP No.35 of 2022 the defendants/respondents have been asked not to proceed with construction.

8. Respondent has appeared on notice and filed counter affidavit as well.

Mr. Dipak Deb, learned counsel for the respondent, submits that the learned trial Court on perusal of the report of the Survey Commissioner on both the occasions and the contradictory two diagrams rightly rejected the Survey Commissioner's report dated 27.03.2023 vide order dated 07.08.2023. As per the trial Court's order dated 07.08.2023, the Survey Commissioner without taking the measurement of the adjacent plots of the parties in terms of the partition deed has shown the suit pathway like a Bengali alphabet "Da" in his report dated 28.11.2023 to some extent similar to diagram-I of the earlier report dated 27.03.2023. Therefore, the respondent submitted written objection against the report dated 28.11.2023 as the said report was submitted without

following the order dated 07.08.2023 passed by the learned trial Court. The learned trial Court has rightly chosen to appoint a Survey Commissioner from the office of SDM, Sadar, Agartala or D.M. & Collector, West Tripura since the Survey Commissioner even on the second occasion did not conduct the survey work purposefully following the order of the High Court dated 05.08.2022 passed in CRP No.35 of 2022 and also the order of the learned trial Court dated 07.08.2023. By the order dated 07.08.2023, the learned trial Court had asked the Survey Commissioner to demarcate the suit property afresh with reference to the adjacent plots in terms of the partition deed by metes and bounds as per the judgment and order dated 05.08.2022 passed in CRP No.35 of 2022 but the Survey Commissioner on his own whims and being biased by the influence of the petitioner submitted the report dated 28.11.2023 showing the suit pathway without following the partition deed, khatian and settlement map relating to the suit pathway under R.S. Plot No.2549 of R.S. Khatian No.550 like diagram-I of the earlier report dated 27.03.2023. In the report dated 28.11.2023 the Survey Commissioner has shown the plots of the land of Madhusudan Bhattacharjee, Asha Bhattacharjee and Brajendra Ch. Bhattacharjee adjacent to the suit pathway without mentioning the area and survey plot numbers as per direction of the High Court in CRP No.35 of 2022 and the order of the learned trial Court dated 07.08.2023 which render the Survey Commissioner's report completely vague and uncertain. The learned trial Court has not committed any jurisdictional error in rejecting the Survey Commissioner's report dated 28.11.2023. There is no illegality, impropriety or jurisdictional error committed by the learned trial Court in passing the impugned order dated 25.07.2024.

9. Learned counsel for the petitioner has during the course of submission also adverted to the registered deed of partition bearing No.1-2388 executed on 25.03.1986 registered on 04.04.1986 between the deceased petitioner No.1 Madhusudan Bhattacharjee, father of the plaintiff/respondent and proforma respondent namely Brajendra Ch. Bhattacharjee and Asha Bhattacharjee, the widow of Late Nripendra Ch. Bhattacharjee under which partition of their joint property measuring 02 Kanis 7 gandas 1 kranta 5 dhurs was undertaken out of which Brajendra Ch. Bhattacharjee got 15 gandas 1 karas 1 kranta 5 dhurs being the 1st schedule; Asha Bhattacharjee got the land measuring 15 gandas 2 karas 12 ½ dhurs being the 2nd schedule and Madhusudan Bhattacharjee got the land measuring 15 gandas 2 karas being the 3rd schedule of the said deed of partition. During the process of mutation, the 3(three) co-sharers got their names mutated in the separate khatians relating to their respective shares of land as per the deed of partition and the land measuring 0.0200 acres i.e. 1 ganda recorded in C.S. Khatian No.29052 or R.S. Khatian No.550 in the joint name of Brajendra Ch. Bhattacharjee, Madhusudan Bhattacharjee and Asha Bhattacharjee. Neither of the parties of the said deed of partition ever challenged the record of the land measuring 0.200 acres as common pathway either recorded in C.S. Khatian No.29052 or in R.S. Khatian No.550 and even did not challenge the settlement map till date.

10. Learned counsel for the respondent has also referred to an application by Madhusudan Bhattacharjee, the deceased petitioner No.1 before the SDM, Sadar by which a proceeding bearing No. Misc. 03 of 2019 under Section 133 of Cr.P.C. was initiated. In the said proceeding, as per order of the

learned SDM, Sadar the demarcation team submitted a report dated 19.09.2020 with a hand sketch map wherein it was shown and stated that Madhusudan Bhattacharjee (deceased petitioner No.1) encroached one part of the common pathway and also started new RCC building construction thereon under R.S. Plot No.2549 of khatian No.550. The said proceedings were disposed of with some direction by order dated 10.11.2020. This demarcation report and order of the SDM are enclosed as Annexure-R/4 and R/5. Thereafter, the plaintiff/respondent herein filed T.S. 96 of 2020 before the learned Civil Judge (Sr. Division), Court No.1, West Tripura, Agartala which was subsequently transferred to Court No.2.

11. Learned counsel for the respondent has also referred to the progress of events and developments that have taken place on a petition under Order XXXIX Rules 1 & 2 read with Section 151 of the CPC by them for granting temporary injunction restraining the defendants. It is submitted that the CRP No.35 of 2022 was instituted against the order dated 31.03.2022 passed in Misc. Appeal No.112 of 2021 by the learned Additional District Judge, Court No.2, West Tripura, Agartala whereby the order of granting injunction dated 05.04.2021 was vacated. It is submitted that the learned trial Court has not committed any jurisdictional error in seeking a fresh survey report from competent Survey Commissioner from the office of SDM, Sadar or D.M. & Collector, West Tripura. Therefore, the petitioner should not have any grievance against it.

12. Learned senior counsel for the petitioner in reply has submitted that the documents being referred to by the plaintiff/respondent herein, i.e. the

khatian, the mutation records, the report of SDM in a proceeding under Section 133 of the Cr.P.C. have no bearing on the present issue. The evidence of the parties have just commenced and plaintiff has been asked to submit his examination-in-chief on affidavit. If these are materials which the plaintiff seeks to rely on the basis of the pleadings and the list of documents annexed to the plaint, the plaintiff has adequate opportunity to adduce them during trial subject to objection and cross-examination by the defendants. The defendants also have the opportunity to adduce other material evidence during trial as per the facts pleaded by them in their written statement. However, if the order of this Court dated 05.08.2022 in CRP No.35 of 2022 and the order dated 07.08.2023 passed by the learned trial Court are taken into account, then the report dated 28.11.2023 submitted by the Survey Commissioner on the second occasion in compliance thereof does not suffer from any infirmity which necessitated its rejection by the learned trial Court vide the impugned order dated 25.07.2024. If the operative part of the impugned order is minutely scrutinized, it would appear that the learned trial Court has embarked upon an exercise wholly unwarranted to the limited issue of the mandate of the Survey Commissioner for identifying the ejmali pathway as per the partition deed executed by metes and bounds between the parties in terms of the directions passed by the learned Court in CRP No.35 of 2022. Learned trial Court has ventured beyond his jurisdiction by observing that the Survey Commissioner has not taken the measurement of the entire land recorded in C.S. Khatian No.29052 and R.S. Khatian No.550. If the relief prayed for by the plaintiff is seen, the dispute in the instant suit is confined to declaration of the suit pathway which according to the plaintiff measures 1 ganda and not 1/2 ganda

as has been written in the partition deed. This dispute does not require measurement of all adjoining lands which the parties to the partition suit have apportioned to themselves by metes and bounds and regarding which there is no *lis per se* to be tried in the present suit. Moreover, the report of the Survey Commissioner can at best be only one piece of evidence whereas the plaintiff and the defendants have the opportunity to adduce all other material evidence as are based upon their pleadings and the list of documents annexed to their pleadings during the course of trial which will enable the learned trial Court to arrive at a just and comprehensive decision on the real controversy between the parties as regards the ejmali pathway. The impugned order, therefore, deserves to be set aside.

13. I have considered the submissions of learned counsel for the parties at length. The material facts and the documents relevant for determining the issue at hand have been referred to in the foregoing part of the order.

14. The relief prayed for by the plaintiff and the observations made by this Court in CRP No.35 of 2022 vide order dated 05.08.2022 have also been quoted in the foregoing part of this order. The order of the learned trial Court dated 07.08.2023 (Annexure-10) by which the first report of the Survey Commissioner was rejected and the same Survey Commissioner was directed to conduct a fresh survey also needs to be extracted hereunder as regards its operative portion to complete the narration of events:

"After perusal I am of the opinion that the report with hand sketch maps submitted by the survey commissioner is not clear, the portions of the plot and the suit property as per the Partition Deed is not mentioned and was not prepared in terms of Partition Deed ordered by the Hon'ble High Court of Tripura, Agartala.

Hence, I am not inclined to accept the report of survey commissioner and thus, it is rejected.

Survey Commissioner, Mr. Mihir Dey is hereby asked to demarcate the suit property afresh and to re-submit the report with fresh demarcation of the suit property with reference to the adjacent plots in terms of Partition Deed by metes and bounds as per the judgment and order of Hon'ble High Court of Tripura, Agartala passed in CRP 35 of 2022. He is further asked to report that whether there is any obstruction for ingress and egress of the plaintiff from his homestead land or any other obstruction on the suit property and whether the present quantum of the suit property is as per the Partition Deed or not.

Inform the Survey Commissioner accordingly.

Fix **06-09-2023** For report of survey commissioner."

15. Thereafter, the Survey Commissioner's report was submitted on 28.11.2023 which reads as under:

"Survey Commission Report

As per the order of the Ld. Court dated 07-08-2023, I went to the spot for demarcation of the suit property on 19-11-2023 at about 1.30 p.m after serving notice to the parties to the suit. Accordingly, both the parties were present, when I took up the demarcation work of the suit land, described in Schedule-'C' of the plaint basing on the description of the said land contained in Schedule-4 of the Partition Deed bearing No- I-2388 as understood from the parties, wherein the measurement of the suit land has been given as 2(two) karas with clear identification by giving the description of the possessors of the said land.

Both the parties have confirmed that there is no dispute with respect to the land of one Ranjit Debbarma (now deceased) to the adjacent West side of the suit path, where a pacca wall in a portion and GCI Sheet fencing in two portions are in existence (both undisputed). Since, I was directed by this Ld. Court to re-submit the report with fresh demarcation of the suit property with reference to the adjacent plots in terms of Partition Deed by metes and bounds, I initially have identified the adjacent plots to measure the suit land with reference to the undisputed eastern boundary wall and GCI Sheet fencing constructed/put on the undisputed Eastern boundary of the house of Late Ranjit Debbarma and found that along the Western boundary of the land of Madhusudan Bhattacharjee starting from the main road is 5 ft 4 inches, when as per the Partition Deed it should have been 3 ft 4 ½ inches in width for the entire length of 128 ft 2 inches i.e 432 sq.ft, which is equal to 2 karas (½ ganda) as per local measurement. While taking the measurement of the suit land, it is found that the said path is extended up to 81 feet along the Western end of the land of Shri Madhusudan Bhattacharjee touching the land of said Ranjit Debbarma, thereafter it has turned right to the extent of 21 ft 4 inches towards West then it has gone up to 22 ft 6 inches to touch the northern boundary line of Brajendra Bhattacharjee now plaintiff identified by a pucca pilar at the extreme South West end of the said path where the Northern boundary line of the plot of plaintiff starts separating his land with the land of Asha Bttacharjee. To make it clear it is stated that the schedule of the suit land of 21 ft 4 inches stretch as per Partition Deed is Late Ranjit Debbarma to the west and Lt Asha Bhattacharjee to the East, and the schedule of the 22 ft 6 inches stretch, Ranjit Debbarma is to the West and Smt. Asha Bhattacharjee to the East and Brajendra Bhattacharjee to the South(now plaintiff).

In view of the aforesaid factual position so revealed after measurement of the suit land, I have found that the existing suit path as 5 ft 4 inches at the western end of the plot of land of Shri Madhusudan

Bhattacharjee, when as per the partition Deed, the width of the said path should have been 3 ft 4 ½ inches. I did not find any obstruction for ingress and egress of the plaintiff from his homestead land or any other construction on the suit property(path) and the present quantum of the suit land(path) is a bit more than the quantum mentioned in the Partition Deed i.e 2(two) karas as the width of the said path along Western boundary line of the house of Madhusudan Bhattacharjee is 5 feet 4 inches, when the actual width as per Partition Deed, the same should have been 3 feet 4½ inches.

A hand sketch Map of the demarcation of the suit land in the light of the order of the Learned Court is enclosed."

16. This report has been objected to by the plaintiff upon which the impugned order dated 25.07.2024 has been passed indicating the minds of the learned trial Court to undertake a fresh survey through an expert in the field from the office of SDM, Sadar, West Tripura. The discussion of the learned trial Court on the objection of the plaintiff and the stand of the defendant/petitioner herein extracted above if minutely scrutinized indicates that the learned trial Court has strayed beyond the mandate of the directions contained in the operative part of the order dated 05.08.2022 in CRP No.35 of 2022 at paragraph-13 and also its own directions contained in the order dated 07.08.2023. The discussion made in the impugned order shows that the learned trial Court has discarded the Survey Commissioner's report dated 28.11.2023 on the ground that he has not taken the measurement of the entire land recorded in C.S. Khatian No.29052 and R.S. Khatian No.550. The Survey Commissioner has not mentioned in his report that taking measurement of all the plots of the partition deed is not possible. The learned trial Court has also at some places observed that if the matter is considered from the point of view whether defendants No.1 and 2 are constructing their building by encroaching the suit land recorded as pathway in C.S. Khatian No.29052 and R.S. Khatian No.550 or not, then taking measurement of all the plots of the partition deed was required to make the picture very clear. Evidently, this was not the scope

of the dispute raised in the plaint as the plaintiff had only sought a declaration to the effect that the suit pathway as described in Schedule-C of the plaint is the joint property of the plaintiff-defendant and proforma-defendant having equal right of enjoyment and possession; and a declaration that the suit pathway consists of land measuring 1 ganda as recorded in C.S. Khatian No.29052 and R.S. Khatian No.550 under C.S. Plot No.9173/49952, R.S. Plot No.2549 but not consisting of 1/2 ganda of land as has been written in the partition deed.

17. Clearly in the matter which travelled to this Court in CRP No.35 of 2022 on an injunction petition, a Coordinate Bench of this Court had after taking note of the case of the parties on the issue of injunction given liberty to both sides to file appropriate application before the Court for finding the property by way of demarcation in terms of their partition deed by metes and bounds. This order and the order dated 07.08.2023 did not necessitate the Survey Commissioner to measure and identify all the adjacent plots of Madhusudan Bhattacharjee, Asha Bhattacharjee or Brajendra Ch. Bhattacharjee. It had only asked the Survey Commissioner to demarcate the suit property afresh, i.e. the pathway and to resubmit the report with fresh demarcation of the suit property with reference to the adjacent plots in terms of the partition deed by metes and bounds as per the judgment and order passed by this Court in CRP No.35 of 2022. The learned trial Court has gone beyond the mandate of order dated 05.08.2022 in CRP No.35 of 2022 and its own order and seems to have been persuaded to base his ultimate conclusion only on the basis of the Survey Commissioner's report. The parties are yet to adduce their evidence on all matters pleaded by them on the basis of the documents

annexed and relied upon, based upon which the learned trial Court will have the occasion to arrive at an adjudication on the real issue in controversy.

18. In such circumstances, the impugned order proposing to undertake a fresh survey exercise is wholly uncalled for. As such, as a cumulative result of the reasons recorded hereinabove and the detailed discussion made, this Court is of the considered view that the impugned order deserves to be set aside.

19. Accordingly, the instant revision petition is allowed. The impugned order dated 25.07.2024 passed by the learned Civil Judge (Senior Division), Court No.2, West Tripura, Agartala in case No.T.S. 96 of 2020 is set aside. The learned trial Court should proceed with the trial.

20. The revision petition is disposed of.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

Pulak