

**Surya Kumar Das and ors. Vs. Ajit Kumar Das and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/131752](http://sooperkanoon.com/131752)

**Court :** Patna

**Decided On :** Mar-09-1998

**Judge :** M.Y. Eqbal, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 20, Rule 6A - Order 26, Rule 14

**Appeal No. :** First Appeal No. 35 of 1997(R)

**Appellant :** Surya Kumar Das and ors.

**Respondent :** Ajit Kumar Das and ors.

**Advocate for Pet/Ap. :** V. Shivnath, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**M.Y. Eqbal, J.**

1. This appeal has been listed under the heading 'Orders'.

2. It appears that the instant appeal has been preferred against the order dated 18-12-1996 passed by th'e Subordinate Judge III, Ranchi, in Partition Suit No. 134 of 1988(hereinafter referred

to as 'the impugned order') whereby and whereunder the learned Court below in a final decree proceeding confirmed the report of the Pleader Commissioner and ordered for preparation of final decree.

3. When the appeal was placed before the Bench on 12-8-1997 it was contended on behalf of the appellants that since the final decree was not prepared, the appeal could be filed under Order XX, Rule 6A of the Code of Civil Procedure (hereinafter referred to as 'the Code') against the operative part of the said order by which the learned Court below directed for preparation of final decree. In view of the submission the objection raised by the office for filing of certified copy of the decree was ignored. Thereafter the impugned order was sent to the Court below for necessary correction and the same was returned with a report dated 13-11-1997 that the final decree under Order XX, Rules 6 and 7 of the Code has not been drawn up as yet as non-judicial stamp has not been supplied by any of the parties. The appeal, therefore, listed before me with office note and the report for passing appropriate order on the competency of the appeal. 4. I have heard Mr. V. Shivnath, learned counsel appearing on behalf of the appellants at length who has tried to impress me that even if a final decree is not drawn up, the appeal is competent

and maintainable against the operative portion of the impugned order by which the Commissioner's report was confirmed and there is no impediment in the maintainability of the appeal.

5. Having regard to the facts and circumstances of the case, the question falls for consideration is whether the appeal will lie only against the operative portion of the impugned order without filing a copy of the final decree and whether the last paragraph of the impugned order shall be deemed to be a final decree in a partition suit under the provisions of Order XX, Rule 6A of the Code.

6. The Code is intended mainly to regulate procedure in Civil Courts. It is not ordinarily intended to create new right or take away existing right. It deals with procedural matters relating to the machinery for the endorsement of substantive rights as contra-distinguished from the substantive rights themselves. The Code of Civil Procedure has got two parts, namely, body of the Code and the Schedules.

The body of the Code creates jurisdiction and the rules indicate the mode in which that jurisdiction is to be exercised and they must be read together. In absence of any rule made by the High Court in exercise of its power under Section 122 of the Code, Rules in the First Schedule will govern the procedure dealt with therein.

7. Now let us examine the scheme of and the arrangement of the different provisions relating to the procedure under the Code.

8. Part I of the body of the Code consists of various sections which lays down the provisions with regard to jurisdiction of the Courts, place o'f suing, institution of suit, power of the Courts in relation to summons and discovery and finally pronouncement of judgment and decree. Part II of the Codes relates to execution of the decree. Part III of the Code prescribes the power of Courts in the matter of issuance of commission. The other, parts of the body of the Code are not relevant in the present case. From perusal of the schedule it appears that the Rules have been chronologically arranged for giving effect to the provisions of the body of the Code. Orders I to XIX of the Code lay down mode, procedure and power of the Courts from the institution of the suit till the hearing of the parties and examination of the witnesses. Order XX of the Code lays down the next stage of the suit, i.e. pronouncement of the judgment and decree by the Courts Rule 1 of Order XX says that the Court, after the case has been heard, shall pronounce judgment in open Court, either at once or, as soon thereafter as may be practicable, on

some future day. Rule 2 of Order XX of the Code empowers the Court to pronounce a judgment which was written but not pronounced by the predecessor of that Court, Rule 3 says that the judgment shall be signed and dated by the Judge pronouncing it. Rule 4 speaks about judgment of Small Cause Courts. Rule 5 provides that the Court shall, in the judgment, state its findings or decisions upon each separate issue. Rules 6 and 6-A of Order XX of the Code relate to decree which is worth to be quoted hereunder :

'6. Contents of decree.-- (1) The decree shall agree with the judgment; it shall contain number of the suit, names and descriptions of the parties, their registered addresses and particulars of the claim and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit and by whom or out of what property and in what proportion such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set-off against any sum which is admitted or found to be due from the former to the latter.'

'6-A. Last paragraph of judgment to indicate in precise terms the reliefs granted.--

(1) The last paragraph of the judgment shall state in precise terms the relief which has been granted by such judgment.

(2) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible, and, in any case, within fifteen days from the date on which the judgment is pronounced; but where the decree is not drawn up within the time aforesaid, the Court shall, if requested so to do by a desirous of appealing against the decree, certify that the decree has not been drawn up and indicate in the certificate the reasons for the delay, and thereupon.

(a) an appeal may be preferred against the decree without filing a copy of the decree and in such a case the last paragraph of the judgment shall for the purposes of Rule 1 of Order XLI, be treated as the decree; and

(b) so long as the decree is not drawn up, the last paragraph of the judgment shall be deemed to be the decree for the purpose of execution and the party interested shall be entitled to apply for a

copy of that paragraph only without being required to apply for a copy of the whole of the judgment; but as soon as the decree is drawn up, the last paragraph of the judgments shall cease to have the effect of a decree for the purpose of execution or for any other purpose;

Provided that, where an application is made for obtaining a copy of only the last paragraph of the judgment, such copy shall indicate the name and address of all the parties to the suit.'

9. Rule 6-A of Order XX of the Code is a new provision which has been inserted with a view to ensuring that the delay in preparation of the decree may not affect the rights of the parties to file an appeal and further that the last paragraph of the judgment should precisely indicate the relief granted so that in absence of a decree, an appeal may be preferred on the basis of that paragraph and that para may also be used for the purpose of the execution of the decree. The Joint Committee felt that it should be made obligatory on the part of the Code to draw up the decree within fifteen days from the date on which the judgment is pronounced. In case it is not possible to draw up the decree within the period so fixed, the Court, on request by a party desirous of appealing against the decree, should be required to certify that the decree has not been drawn up and also to indicate in the certificate the reasons for the delay. From the perusal of the aforesaid Rule 6-A it is further manifest that the appeal might be preferred on filing of a copy of the last paragraph of the judgment, but as soon as the decree is drawn up, last paragraph of the judgment should cease to have the effect of a decree.

9A. Before discussing further, it would be most appropriate to look into the provisions of Rule 14 of Order XXVI of the Code under which the impugned order under appeal has been passed which reads hereunder;

'14. Procedure of Commissioner.-- (1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the

commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to

the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.'

10. From bare perusal of the aforesaid provisions it is clear that after preliminary decree in a partition suit is passed, any of the parties to the suit may apply for preparation of the final decree by appointing Pleader Commissioner for the purpose of making partition or separation, according to the rights as decided in the preliminary decree. The Commissioner so appointed shall submit a report allotting shares to the parties and on submission of the report, the Court, after hearing the objection, if any, shall confirm, vary or set aside the report. If the Court by an order confirmed the report a final decree shall be passed in accordance with the same. After the order confirming the report of the pleader commissioner is passed by the Court under the aforementioned Rules, duty casts upon the parties to submit non-judicial stamp for the purpose of preparation of final decree. It is well settled that mere order for preparation of final decree is not a decree when no final decree has actually been prepared. The question as to what will constitute 'Final decree' has been settled by the Apex Court in the case of S. B. Lokhande v. C. S. Lokhande, AIR 1995 SC 1211. The Apex Court held as under :

'It has been seen that after passing of preliminary decree for partition, the decree cannot be made effective without a final decree. The final decree made in favour of the first respondent is only partial to the extent of his 1/6th right without any demarcation or division of the properties. Until the rights in the final decree proceedings are worked out qua all and till a final decree in that behalf is made, there is no formal expression of the adjudication conclusively determining the

rights of the parties with regard to the properties for partition in terms of the declaration of 1/6th and 5/6th shares of the first respondent and the appellants so as to entitle the party to make an application for execution of the final decree.'

11. The Apex Court further held that mere giving of direction to supply stamped paper for passing final decree does not amount to passing a final decree. Until the final decree determining the rights of the parties by metes and bounds is drawn up and engrossed on stamped paper(s) supplied by the parties, there is no executable decree. It is, therefore, clear that preparation of final decree in a partition suit depends upon the submission of non-judicial stamp by the parties. So long as non-judicial stamp is not filed by the parties, the Court is helpless in drawing up a final decree.

12. Reading both the provisions of Order XX, Rule 6-A and Order XXVI, Rule 14 of the Code, I am of the considered opinion that the duty casts upon the Court to endeavour and ensure the passing of the decree as expeditiously as possible and in any case within fifteen days from the date of pronouncement of the judgment relates to a decree in a suit or other proceedings other than final decree of a partition suit. Reason is obvious that drawing up a final decree totally depends upon the wishes of the parties to file necessary non-judicial stamp. The provisions of Order XX, Rule 6-A of the Code came for consideration before a Special Bench of Calcutta High Court in the case of Bholanath Karmkar v. Madanmohan Karmkar, AIR 1988 Cal 1 (SB). Their Lordships have held as under;--

'Ordinarily, a decree is made or passed immediately a judgment is pronounced even though a decree in proper form is formally drawn up later and that is why Order 22, Rule 7 of the Civil P.C. provides that the decree, whenever drawn up, shall bear the date on which the judgment is pronounced. The provisions of Rule 6-A of Order 20 have been enacted only to ensure, as has been stated in the statements of Objects and Reasons, that the delay in preparation of a formal decree may not stand in the way of a successful decree-holder from going ahead with the execution of the decree and that until a decree is formally drawn up, the last paragraph of the judgment shall be deemed to be a formal decree for the purpose of execution. Rule 6-A would obviously apply to

such a case where, but for the delay made by the Court in drawing up the decree, there could have been a formal decree immediately on the pronouncement of the

judgment and there was nothing to prevent such a decree to come into existence in formal frame at any time after the judgment. But where, as in a decree for partition, no legally operative decree can come into existence at all unless the requisite stamps are furnished by the parties and the decree is engrossed on such stamp papers. Rule 6-A can have no application and cannot operate to equate the last paragraph of the judgment with the formal decree for partition outweighing and overthrowing the relevant provisions of the Stamp Act. The words 'where the decree is not drawn up' in R. 6-A(2) would obviously contemplate a case where the decree could be, but has not been, drawn up by the Court and cannot refer to a case where, as in a partition suit, the decree could not at all be drawn up and has, therefore, not been drawn up by the Court for the requisite stamp papers not having been furnished by the parties.'

13. As noticed above, from the arrangement of different provisions of the Rules in the Schedule of the Code it is clear that the Court after following the procedure provided under Order 1 to Order XIX of the Code can pass a judgment followed by a preliminary decree in a partition suit and not a final decree. For preparation of final decree the Court has further to proceed under Order XX VI of the Code and pass a final order under Rule 14 of Order XXVI of the Code and even thereafter the Court has to wait for the preparation of final decree till non-judicial stamps are filed by the parties. In my considered opinion, therefore, the impugned order passed under Order XXVI, Rule 14 of the Code cannot be deemed to be a judgment within the meaning of Order XX, Rule 6-A of the Code; consequently unless the final decree is engrossed in a non-judicial stamp and finally sealed and signed by the Court, the appeal cannot be preferred from the last paragraph of the impugned order under the provisions of Rule 6-A of Order XX of the Code.

14. For the Reasons aforesaid, the instant appeal of the appellants by filing memorandum of appeal together with the impugned order passed under Order XXVI, Rule 14 of the Code is not maintainable and it is, therefore, dismissed.

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