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21/4/59				15/1/59

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5th court
 7th April 1959
 Sir P. Purf

To
 The Subordinate judge, 5th court,
 at A-lipo
 Dist -24-parganas.

Title Suit no 101 of 1935
 Kartick chandra Des Ghati .. pliff
 versus

Atul Krishna Des Ghati deidt
 Commissioners Final Report on
 partition of Immoveable properties
 as per order dated 25.5.57.

Sir,

I have the honour to state that on
 20.9.1937 I submitted my report on
 allotments of 9 immoveable properties.
 Hereafter in compliance with
 the directions of the court on the
 joint petitions dated 15.11.1937
 and 7.12.1937 filed by the then parties
 to the suit a supplementary
 report was filed by me on 17.12.37
 making the alterations in the copy
 passages in some of the said immoveable
 properties and changes of
 allotments in the homestead property
 and the necessary adjustments were

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also made therein as directed.

Subsequent to the filing of the said two reports dated 20.9.37 and 17.12.37, the court was pleased to pass orders on 4.1.38 that final decree for partition ~~was~~ be made and drawn in terms of the commissioners report and plan which would form part of decree. On 14.1.38, a petition was filed by the then plaintiff Rajobali Desi praying for reconsideration of the order of 4.1.38. On 15.1.38 the court was pleased to vacate the order dated 4.1.38 as the commissioner had not then completed the work and the commissioner was further directed to give possession to the dwelling house as desired by the parties on the joint petition filed on 14.1.38.

In compliance with the directions given on 15.1.38 I made demarcations of the allotments in the residential building and hand and delivered possession to the parties. The parties granted receipts of taking delivery of possession and the parties filed a joint petition on 15.7.38 acknowledging receipt of possession of their respective shares in the ancestral dwelling house. On 30.7.38 the delivery of possession on the basis of the joint ~~petition~~ petition dated 15.7.38 was confirmed by the court.

On 21.9.38 the plaintiff Rajobali Desi and the defendants 1&2 filed a joint petition praying that the commissioner should be directed to demarcate the allotments of the petre



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on the spot and put the parties in possession thereof. After hearing the pleaders of the parties and the commissioner the court was pleased to allow the prayer on that date i.e. 21.9.38.

In compliance with the said directions as per order dated 21.9.38 I made demarcations on the spot of the different allotments relating to different properties as stated below.

① Premises no 132 South Sinthi road .

Demarcation of the allotments of the parties was made on the spot .On 8.11.38 and 11.11.38 .Since then the parties enjoyed their respective allotments .It may be noted here that the allotments made in favour of the then plaintiff late Rajobala Dasi were sold under orders of the court. The present defendant Atul Krishna Das Ghati the then defendant no 1 subsequently sold one of the two lots of land including the tank obtained by him in his allotment .Fishes in the said tank at 132 South sinthi road premises were caught in my presence and portions of those fishes were sold and sale proceeds divided amongst the parties according to their respective shares and the said Atul Krishna Das Ghati took his share of the fishes in kind and again threw them in the said tank at 232 south Sinthi road as the same comprised in his allotment , Since the present plaintiff kartick chandra Das Ghati the then defendant no 2 has been enjoying



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the portion allotted to him and Atul Krishna Das Ghati has been enjoying the remaining portion allotted to him. The entire area allotted to Rajobala Dasi the then plaintiff was sold and nothing now remained in her share here at 132 south sirthree road premises.

In this connection it may be noted that the defendant Atul Krishna Das Ghati filed a petition dated 15/2/56 praying for commission work Denovo and the plaintiff kartick chandra Das Ghati filed a petition of objection against the said petition of the defendant. The court heard the learned lawyers of both sides at length and the court on 28.5.57 directed the Commissioner to proceed with the remaining part of his work in the light of devolutions by death happening since after the passing of the preliminary decree observing that there was no case for reopening matters already concluded and formally given effect to by the parties.

Though question was raised by the defendant I do not see any reason to disturb the allotment obtained by the pliff kartick chandra Das Ghati and Atul Krishna Das Ghati the defendant who are in exclusive possession of their respective allotments. So far as this property is concerned the previous allotments obtained by kerick chandra Das Ghati and Atul krishna Das Ghati stand, and I do not find any reason to interfere there.

② Premises no 3 subsequently numbered as 3/1 Sentrapara



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Lane was divided into two portions of which the eastern portion was allotted to the then plaintiff Rajobala Dassi since deceased. The western portion was allotted to Atul Krishna Das Ghati then defendant no 1, Demarcation of the said two portions was made by me on 13.11.38. There after the allotment obtained by Rajo bala Dasi was sold under orders of the court. The allotment obtained by Atul Krishna Das Ghati was also subsequently sold by him. Therefore nothing remains to be done relating to this property.

(3) Premises no 1/1 Santrapara lane . This was the northern half portion of a tank belonging to the parties . The southern half portion of the said tank was possessed since the time of the father of the plaintiff and the defendant under a lease from the owner of the said southern portion.

The premises no 1/1 Santrapara lane was allotted to kartick chandra Des Ghati . Fishes of the said tank were caught in my presence on 2.5.39 and divided amongst the parties according to their respective shares. Fishes obtained by the then plaintiff in her share were removed and kept again in the tank at 4 santrapara lane and fishes obtained by Atul Krishna Das Ghati in his share were taken to the tank at 132 South Sinthi road which tank he obtained in his allotment of the said 132 south sinthi road. The quantity of fishes obtained by kartick chandra Das Ghati in his share

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was put again by him in the tank at 1/1 Santrapara lane which tank he obtained in his allotment. Therefore the allotment of 1/1 Santrapara lane stands in the share of ker tick chendra Des Ghati .

④ Premises no 12/1/1 seven tanks lane (plan 1).

This is a plot of land with a tank which covers the major portion of the plot. In my last report dated 20.9.37 and 17.12.37 this property was allotted to the share of Rajobal e Dasi mother of the plaintiff and the defendant. The ~~area~~ area of the tank has considerably increased owing to the erosion of the banks of the tank. This property left by the mother of the parties is inherited by them in two equal shares. Therefore the property has to be partitioned between the plaintiff and the defendant. Sittings were held for the purpose and submissions were made by the parties on valuation and allotment which are considered by me as below.

The area of this premises is 13k 1ch 6asqft. The plff suggested that the valuation of this property should be now made at Rs 150/ per katta, while the learned pleader for the defendant submitted that his client would stick to the old valuation as accepted by the commissioner in his report dated 20.9.37.

From my last report dated 20.9.37 it appears that there were 23 trees on the said premises which were valued at Rs5/ each amounting to Rs 115/. Now it appears that there are only 5 trees at present. When 18 trees are not now



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in existence the valuation of those 18 trees is to be deducted from the valuation of this property and as such the valuation of the existing 5 trees is now fixed at Rs35/ only

As to valuation of the land the learned pleader for the defendant insisted on the old valuation while the pliff wanted to value it at Rs 150/ per katta.

The valuation was made by me twenty years ago and with the development of the area in general the valuation of land has increased in general. But this property is practically a tank without substantial land on three sides and a strip is found on the northern side. This property has got only a 6' wide passage for access to the corporation road. So I think that the suggestion made on behalf of the defendant for valuing the property as it was valued by me in my report dated 20.9.37 may be accepted and the valuation should not be increased as submitted by the pliff. The valuation of land and tank as noted in my said report dated 20.9.37 is thus accepted by me and it amounts to Rs 1659/0/11p and the valuation of the existing 5 trees amounting to Rs25/ is added to it. The total valuation thus comes to Rs 1684/0/11p

As to allotment :-

The plaintiff suggested that this property should be allotted to one of the parties. The defendants learned pleader suggested that this property should be partitioned into two equal portions in value by extending the said 6' wide common

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passage towards the west along the northern boundary line up to a point so as to make two allotments equal in value.

I have observed above that this property practically consists of a tank having a strip of land on the northern side. If the suggestion of the pleader for the defendant be accepted it will be dividing a tank of the width of about 65' (north line) and 80' (south line) length wise each allotment having only 32'6" and by such an allotment complications are bound to arise as to independent enjoyment of each allotment as a tank or as a land after reclamation.

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Therefore I do not think it reasonable and convenient for enjoyment to divide the property in two equal allotments and as such this property should be allotted to one of the two parties.

This property in its entirety is allotted to the defendant at the above mentioned valuation of Rs 1684/0/11p on this account the plaintiff will get a share of Rs 842/0/5½p. The property is shown in plan no 1.

5. Premises no 152 (old 49) Kalicharan Ghosh road (plan no 2)

This is a plot of land forming the southern half of Holding no 222 Subdivision 14 Division 1 of Panchannagram. The northern half of this holding belongs to late Bepin Behari Das Ghatissans and their co-sharers.

This southern half portion was partitioned and divided



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in my report dated 20.9.1937 amongst the then plaintiff Rajobala Desi since deceased and Atul Krishna Das Ghati then defendant no 1 and Kartick Chandra Das Ghati then defendant no 2. On submission of my report dated 20.9.37 the parties filed joint petition for widening the common passage from 12' to 16' and making adjustments consequent thereto. The said petition was allowed by the court and directions were accordingly given to me for doing the necessary work in terms of the said joint petition dated 10.11.37-

Accordingly I executed the work and submitted a subsequent report on 17. The court passed an order on 4.1.38 to the following effect - no objection raised to the commissioner's report. Let final decree for partition be made and drawn in terms of the commissioner's report and plan which will form part of the decree.

On 14.1.38 the plaintiff filed a petition praying for reconsideration of the order dated 4.1.38 on the ground that some other works of the commr had not then been completed. On 15.1.38 the order dated 4.1.38 was vacated and the commr was directed to complete his work. Thereafter on the joint petition of the parties the demarcation of the allotments of 4 Santra parallel premises was done and possession was delivered to the parties which was confirmed by the court as per order no 91 dated 30.7.38.

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On 21.9.38 a joint petition was filed stating that the final report regarding allotment of immovables properties submitted by the commissioner had been accepted by all the parties and the parties prayed in that joint petition for directing the Commissioner to demarcate the allotments of the parties on the spot and put the parties in possession thereof. The prayer of this petition dated 21.9.38 was allowed by the court.

Recd
7-5-59

Recd by
J. S. S. S.
19/5/59

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In accordance with the order No.93 dated 21. 9. 38 the demarcation work of 40 (now 152) Malicharan Ghosh Road premises was made by me on the spot on different dates and the work of demarcation was completed on 12. 2. 50. Thereafter the then plaintiff Rajo Bala Dasi realised rents of the southern portions as allotted to her. The then defendant No.1 Atul Krishna Das Ghati thereafter made a gift of a portion of land out of his allotment in favour of his daughter. The then defendant No.2 Kartick Chandra Das Ghati also made a gift of a portion out of his allotment in favour of his daughter.

It appears that the then plaintiff Rajobala Das 1, Atul Krishna Das Ghati defendant No.1 and Kartick Chandra Das Ghati defendant No.2 possessed and enjoyed their respective allotments separately in accordance with the demarcation made of their respective allotments. In the light of the order dated 28. 5. 57 I consider the matter of allotment between Atul Krishna Das Ghati and Kartick Chandra Das Ghati already concluded and given effect to by the said Atul Krishna Das Ghati defendant and Kartick Chandra Das Ghati plaintiff. The half share allotted to Rajobala Dasi mother of the present parties as possessed by her is to be partitioned between her two sons the plaintiff and the defendant.

The said Atul Krishna Das Ghati formerly defendant No and now the sole defendant attended recent sittings held



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on 27. 8. 57 with his pleader Sri Bejoy Krishna Das. Submissions made by Sri Bejoy Krishna Das pleader for the defendants were recorded in my commission proceedings to the effect that the southern which was allotted to the mother of the parties would now be divided half and half between Kartick Chandra Das Ghati Plff. and Atul Krishna Das Ghati Plff. and Atul Krishna Das Ghati defdt. and that his client did not like to make any charge about the valuation. As to allotment the learned pleader consulted his client and as instructed he made suggestion that the entire southern should be divided half and half by a line drawn from east to west from the Corporation Road viz. Kalicharan Ghosh Road on the east up to the western boundary line of the premises and that the southern should be allotted to him and that the common passage of the width of 16' should be kept common between the plff. and the defdt. as it is and that both the plff. and the defdt. should have equal right title and interest and easements over the said common passage.

The plff. agreed to take the northern half portion having frontage on Kalicharan Ghosh Road divided half and half and the land being divided half and half as suggested by the defendant and it was accordingly noted in my commission proceedings.

At this stage the defendant Atul Krishna Das Ghati again gave instructions to his pleader to say that by his above



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suggestion of allotment he could not get the advantage of the 16' wide common passage as the plaintiff would get and his learned pleader submitted that as instructed by his client he wanted to make the following modification in continuation of his former suggestion of allotment. He suggested that the 16' wide common passage might be shifted towards the south in between the two halves of the mother's said southern allotment. He further submitted that if the said common passage were shifted as then subsequently suggested the plaintiff would get equal advantage of the said common passage when the defendant was taking the southern half.

To this the plaintiff submitted that he had objection to the shifting of the common passage as then suggested by the defendant on the ground that he had already transferred by a deed of gift of 2 kattas of land in favour of his daughter showing the said 16' wide common passage as the passage to and from the said gifted plot of land and as such the said passage could not be changed by him which would interfere with the right of passage of the said plot of 2 kattas and the said plot would then have no passage at all.

The learned pleader for the defendant wanted to have it on record that the defendant had also made a gift of 2 kattas of land in favour of his daughter on the said Kali Charan Ghosh Road out of his allotment of 4 k. 2ch.

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24½ sft. and in neither case the donees had made any construction or taken possession of the land.

The learned pleader for the defendant further made a third alternative suggestion that is to say that the common passage might be kept as it was and the entire portion to the south of the common passage might be allotted to his client and the entire northern portion to the north of the said common passage might be allotted to the plff. and the defdt. in that case would make arrangement for reconveyance of the area of 2 kattas plot by his daughter. To this suggestion the plff. objected.

The plff. pointed out that in the mother's said allotment there are corrugated iron sheds built by the mother with money received from the estate and that these structures should be valued and the valuation thereof should be taken into consideration at the time of allotment.

The defendant agreed to have the said structures valued and that the valuation might be taken into consideration at the time of allotment.

As to valuation of the structures at 152 (old 40) Kali Charan Ghosh Road, the learned pleader for the defendant submitted that the said structures might be valued by the Commissioner and he left it to the discretion of the Commissioner.

As I had to value the structures I intended to have the structures inspected. Accordingly I held a sitting on

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21. 5. 58 and held inspection of the structures and took measurements of the same and the boundary lines with reference to the structures. The said structures are shown on the plan on which allotments are marked out.

The plaintiff has not given any valuation of the said structures. The defendant has left it to the discretion of the commissioner.

Accordingly the valuation of the said C.I. structures is made by me as below:

There are five bed rooms with C.I. roof. There are brick walls upto an average height of 1' 6" over which the walls are made of mud with chitta. The plinths are also pucca. Floors are cemented. There are covered verandahs on the south and the west in the inner portion. There are one cookshed and another outhouse. The yard is also pucca and cemented. There is one service privy and there is a bath room with a water reservoir.

The areas of the bed rooms are: 694 sft. valued at Rs. 69.
The areas of the covered verandahs are: 326 sft. valued at Rs. 1.
The areas of the cookshed and another out-house

----- 160 sft. valued at ----- Rs. 80/-
Service privy, bath room with water reservoir: valued at Rs. 4
Pucca yard " " Rs. 5

Total: Rs. 1034/-.

The total valuation of the C.I. quarters including the service privy, water reservoir, bath room etc. comes to Rs. 1034/-

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This southern portion to the south of the 16' wide common passage was allotted to the then plff. Rajobala Dasi and the portion is now to be divided half and half between the plff. and the defdt.

As to valuation of the land this portion of land was valued in two bills. The first belt was up to a depth of 60 ft. from Kali Charan Ghosh Road and the rest of the back land constituted the 2nd belt. The first belt was valued at Rs.500/- per katta and the second belt was valued at Rs.250/- per katta. The front belt upto a depth of 46'6" was allotted to Rajobala Dasi in her saleable $\frac{1}{4}$ share. The remaining portion of the front belt was added to the back belt land and allotted to her other $\frac{1}{4}$ share in my report dated 20. 9. 37. According to the joint petition of the parties the 12' wide passage was widened into 16' wide passage and 2' wide land from each side was taken out for the said common passage and this was done in my subsequent report dated 17. 12. 1937.

After deduction of the area for the widening of the passage the area now remains in the saleable $\frac{1}{4}$ share of Res Rajobala Dasi is 4k 13 ch. 30 sft. and 5k 6 ch. 11 $\frac{1}{2}$ sft. remains in the other $\frac{1}{4}$ share of the said Rajobala Dasi since deceased.

In recent sittings for valuation and allotment of the said two allotments left by the said Rajobala Dasi and inherited by the plaintiff and the defendant, it was

submitted



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submitted on behalf of the defendant that he might be allotted the southern half portion including the said C.I. structures etc. and that the valuation of the land might be taken as it was taken at the time of the last reports i.e. 20. 9. 37 and 17. 12. 37 and that the valuation of the existing structures might be decided by the commissioner according to his discretion. The plaintiff agreed to the suggestion of the defendant as to valuation of the structures and land and also agreed to the suggestion of allotment that is to say he agreed to take the northern half of the land and the southern half might be allotted to the defendant with the structures thereon.

When the suggestion of the defendant was accepted by the plaintiff and noted down in my commission proceedings the defendant through his pleader made suggestions for shifting the aforesaid 16' wide passage in between the half portion of these two allotments and in that case too the southern half portion might be allotted to the defendant. The plaintiff objected to the said suggestion as already noted before.

Under the circumstances I think that the question of shifting of the said 16' wide common passage cannot arise at this stage as a third party has already acquired interest in it and that the partition should now be restricted to the portions inherited by the parties as heirs of their deceased mother the said Rajobala Das i.

The mother was allotted the entire southern portion of

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the said premises in her saleable $\frac{1}{4}$ share and other $\frac{1}{4}$ share. Though the mother got the front allotment in her saleable $\frac{1}{4}$ share this allotment was not sold as we all the parties by petitions expressed their unwillingness to the sale of this saleable $\frac{1}{4}$ share and according to the wishes of all the parties this portion has not been sold.

Now both this saleable $\frac{1}{4}$ share and the other share allotted to the mother are now taken up for partition by metes and bounds between the plaintiff and the defendant. The structures are mainly situated in the front allotment and the service privy and the bath room have fallen in the back allotment. In considering the question of the allotment I have to discuss the respective suggestions made on behalf of the plaintiff as well as on behalf of the defendant as below:

The plaintiff's suggestion is that he is agreeable to take the northern half portion according to the proportionate valuation of the entire π area of the land and that the frontage on Kalicharn Ghosh Road should be divided half and half. If the suggestion of division of the frontage by two equal halves be accepted the line of division runs over and through the structures and in that case the structures have to be dismantled. The defendant in all the sittings wanted to take the structures in his allotment. If the partition line be drawn over the structures the said structures will be of very little value and use. I



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think the structures should not be dismantled and they should be allotted in their present usable condition. In that view of the case the southern portion including the structures as they are allotted to the defendant Atul Krishna Das Ghati.

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The portion of land covered by the structures is allotted to the defendant at the old valuation i.e. at the rate of Rs.500/- per katta. In my last report dated 20.9.37 the front belt land was valued at Rs .500/- per katta and the land of the second belt was valued at Rs .250/- per katta. The total area of the 1st belt was 5 k. 0 ch. 15 sft. and the valuation thereof was Rs.2510-6-8.

For widening of the passage 120 sft. i.e. 2ch.30 sft. is taken from the front southern belt land. After deduction of the said area of 2 ch. 30 sft. from the front belt land of 5 K. 0 ch. 15 sft. the balance of land remains -4k. 13 ch. 30 sft. The plaintiff is entitled to get half of 4k. 13 ch. 30 sft. which is 2k. 6 ch. 37½ sft. and the defendant will also get the equal area of 2k 6 ch. 37½ sft. The defendant has got in the allotment here 2 k. 15 ch. 9 sft. and the plaintiff has got 1 k. 14 ch. 21 sft. The valuation of the defendant's allotment is Rs.1475/-. The area obtained by the plff. being -1 k 14 ch. 21 sft. the valuation thereof comes to Rs.952-1-4p. Therefore the plaintiff is entitled to get the balance i.e. Rs.261-7-4 which is short of half of the valuation of Rs.2427-1-4p. and the plff. having

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obtained land of the value of Rs.1475/- has got Rs.261-7-4 in excess of his half share on this account.

The valuation of the back allotment @ Rs.250/- per katta amounts to Rs.1398-7as. and the area of this allotment was 5 k 9 ch. 22½ sft. For widening of the common passage from 12' to 16' an area of 3 ch. 11 sft. of land was taken out of this back allotment as contained in my report dated 17. 12. 37 and thereafter the area remains to be 5 k.6 ch. 11½ sft. which is now to be divided half and half between the plaintiff and the deftd. In each half of the said area of 5k. 6 ch. 11½ sft. the area is 2 k 11 ch. 5½ sft. which each of the parties is entitled to get.

As to allotment of the back belt land the defendant submitted that he should be allotted the southern portion of this back belt land in continuation of the portion which may be allotted to him from the front belt land which should include the C.I. structures lying in the front belt land. The plaintiff wanted the half of the front allotment from the frontage on the said Kalicharan Ghosh Road being equally divided. If the frontage be divided half and half it will pass over the C.I. structures and the C.I. structures if be divided according to said line of partition the southern portion being allotted to the defendant and the northern portion according to that line of allotment being allotted to the plaintiff, the value of the said structures will be greatly impaired and practically the said structures will have to be dismantled. Therefore I do not think

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it reasonable to allot the entire C.I. structures to the defendant who has all through expressed his eagerness to get the said C.I. structures in his allotment. In so allotting the area has come to be 2 k. 15 ch. 9 sft. and the valuation thereof has come to be Rs.1475/-. But in half share of this portion the defendant is entitled to 1747½ sft i.e. 2k 6 ch. 37½ sft. which is valued at Rs.1213-8-8p. and as such Rs.261-7-4 appears to have been in excess of his half share.

I think that the plaintiff who has got in the front portion of the property short of his half share by the said amount of Rs.261-7-4p. should be given land of the value of that amount of Rs.261-7-4p. from the back belt land in continuation of the allotment he has obtained in the front portion. The valuation of the back belt land is Rs. 250/- per katta and for this amount of Rs.261-7-4 the plaintiff will get 1 k 0 ch. 33 sft. and this area is given to the plaintiff just in continuation of his allotment by drawing a line from north to south upon the land of the back southern allotment which the mother since deceased got in her allotment.

The area of the back belt land in Rajobala Dasi's share is 5k 6 ch. 11½ sft. The Plaintiff is entitled to get 2 K 11 ch. 5½ sft. in his half share so also the defendant in his other half share is entitled to get 2k 11 ch. 5½ sft.

According to the previous allotment of the front belt land the defendant has to give the plaintiff an area of 1 k



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1 k -0-33 sft. of land from the land which the defendant is entitled to get in his share of this back belt land. Therefore the plaintiff will get 3 k 11 ch. 39 $\frac{1}{2}$ sft. and the defendant will get 1k 10ch. 17 $\frac{1}{2}$ sft. which will be equal to 5K 6 ch. 11 $\frac{1}{2}$ sft. i.e. the area divided.

Now as to allotment of this back belt land I have considered the suggestions made on behalf of the plaintiff as well as on behalf of the defendant. The plaintiff all through has wanted his half share of the land dividing the road frontage in two equal halves and he agreed to take the northern half portion of the front as well as the back belt land and he agreed that the southern half portion of land might be allotted to the defendant which might include the C.I. structures. But I have observed that if the line of partition be fixed by a line drawn in the middle from east to west the structures would have to be dismantled. So I have allotted the entire structures to the defendant as wanted by him. Now if the back belt land be divided half and half by drawing a line from east to west after setting apart the said area of 1 k 0 ch. 33 sft. in the share of the plaintiff, the area remaining in the share of the defendant will be 1 k 10 ch. 17 $\frac{1}{2}$ sft. and the said area if given to the defendant in continuation of his allotment of the front belt land will be a strip of land and will have no connection [?] the corporation road or the 16' wide common passage and consequently the defendant will have

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have to use in that case the said area of 1 k. 10 ch. 17 $\frac{3}{4}$ sft. coming and going over the land obtained by him in the front belt land and practically such a strip of land cannot be conveniently utilised for building purposes. The suggestion made on behalf of the defendant does not seem to me to have been made after consideration of the advantages and disadvantages of the said proposed allotment. I do not also accept the suggestion of the plaintiff i.e. to allot him the northern half portion to him dividing the road frontage on Kalicharan Ghosh Road into two equal halves up to the western boundary line whereby the advantages of the 16' wide common passage are enjoyed by him alone and the defendant thereby does not get any advantage of the said passage as the allotment proposed by the defendant himself does not get any access to the road or the common passage. I think that advantages and disadvantages should be equally shared by both the plaintiff and the defendant who have got equal rights and responsibilities in the properties under partition. I therefore make the allotments in the back belt land according to the best of my judgment as stated below.

The defendant is allotted his 1 k 10 ch. 17 $\frac{3}{4}$ sft. from the westernmost side having frontage on the aforesaid 16' wide common passage and the rest of the said back belt land is allotted to the plaintiff whereby both the plff. and the defendant get advantages of the said common passage and the said area of 1 k 10 ch. 17 $\frac{3}{4}$ sft. of land forms a



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plot which is fit to be utilised as a building plot having 22'8" frontage on the said 16' wide common passage.

If the area of 3 k 11 ch. 32 $\frac{1}{2}$ sft. of land were given to the plaintiff as wanted by him with frontage on the said common passage he could have two building plots but by the allotment as made above by me the plaintiff does not get the same and equal advantages. Still however, he will be able to utilise the land he is allotted while the defendant will also be able to utilise the land allotted to him and in the interest of equity and good conscience I have made this allotment without accepting the different suggestions on allotments as made on behalf of the plaintiff and the defendant as well.

There are C. I. structures with Kachapucca walls and pucca floors on the south eastern portion of the said front belt land. The land has been allotted to the defendant and the structures standing thereon are also to be allotted to the defendant. Accordingly, the said C.I. structures, the service privy and the bath room with the water reservoir are valued at Rs.1034/- and allotted to the defendant. The defendant having obtained the structures of the value of Rs .1034/- is liable to pay half of this valuation to the plaintiff viz . Rs.517- as owelty money and the plaintiff will get this sum of Rs.517- as owelty money on account of the value of the structures from the defendant.

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Now as a result of the allotment made above the plaintiff gets land of the area of 1k 14 ch 21 sft from the front belt land of the value of ₹952-1-4p and the area of the back belt land allotted to the plaintiff is 3k 11ch 38³/₄ sft and the valuation thereof is ₹ 935-6-33¹/₃p. The total area obtained under two belts of land is 5K 10Ch 144³/₄ sft and the valuation thereof amounts to ₹ 1887-6-73¹/₃ p.

According to the allotments made above the defendant gets from the front belt land an area of 2k 15 ch 9 sft of the value of ₹ 1475-0-0 and from the back belt land the defendant gets an area of 1k 10 ch 174³/₄ s ft and the valuation thereof amounts to ₹ 412-6-73¹/₃p. The total area obtained under two belts of land is -4k 9ch 264³/₄ s ft and the valuation thereof amounts to ₹ 1887-6-73¹/₃ p. The valuation of the C.J. structures standing on the land of this allotment is ₹ 1034-0-0 which the defendant has been allotted exclusively and the plaintiff shall get his half share of the value of the C.J. structures as owelty money from the defendant and the said owelty money amounts to ₹ 517-0-0.

⑥ Premises No 4 santrapara Lane (Plan No 3)

This is the dwelling house of the parties. This property was divided amongst the then plaintiff Rajobala Dasi since deceased, the present plaintiff Kartick Chandra Das Ghati the then defendant No 2 and the present defendant Atul Krishna Das Ghati who was the defendant no 1 at that time. The residential building was first of all divided between Rajobala Dasi and Kartick Chandra Das Ghati. The northern portion of the building



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building was allotted to Rajobala Dasi and the Southern portion of the said building was allotted to Kartick Chandra Das Ghati. The said Atul Krishna Das Ghati did not want any allotment of the residential building and he was given his $\frac{1}{2}$ share of the valuation of residential building with land underneath partly in cash and partly in land from other portions of the said premises No 4 Santrapara Lane and also from premises No 132 Southsinthee Road out of the portions obtained by Kartick Chandra Das Ghati in his $\frac{1}{2}$ share.

After submission of my said report dated 20.9.37 the said Rajobala Dasi and Kartick Chandra Das Ghati jointly filed a petition for exchanging their respective allotments of the residential building and the said petition was allowed by the Court. In my subsequent report dated 17.12.37 the northern portion of the residential building was allotted to Kartick Chandra Das Ghati and the southern portion was allotted to Rajobala Dasi and the necessary adjustments were made in my said subsequent report dated 17.12.1937.

In the said Atul Krishna Das Ghati got in his allotment a piece of vacant land in 4 Santrapara Lane where he erected a building for his residence and he is at present residing in the said building.

Possession was delivered to the said three parties according to the demarcation made of their respective allotments and the said delivery of possession was confirmed by the court as per order dated. The parties were enjoying their allotments

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allotments since then. On 20.1.1955 the said Rajobala Dasi died & having her two sons the said Atul Krishna Das Ghati defendant and Kartick Chandra Das Ghati plaintiff as per her only heirs. The property left by the said Rajobala Dasi has been interested the plaintiff & the defendant in two equal shares. As such the property in 4 Santrapara Lane has been inherited by Atul Krishna Das Ghati and Kartick Chandra Das Ghati in two equal shares and it will be divided half and half between the plaintiff and the defendant.

P28.

For the said purpose of partition of the portion owned and enjoyed by Rajobala Dasi and as left by her several sittings were held by me to take suggestions of the parties on valuation and allotment. The allotments obtained by Kartick Chandra Das Ghati and Atul Krishna Das Ghati will remain as they are and they will not be disputed or interfered with by this present allotment.

First, I shall deal with the valuation of the property in 4 Santra Lane as left by Rajobala Dasi and as inherited by the plaintiff and the defendant.

The plaintiff states that the structures have undergone natural decay in course of 20 years and the valuation of those structures should be much less than that as was found in 1937 and he submits that the valuation should be Rs 700/- in place of Rs 2710/-. He further submits that the valuation of the land underneath the structures should be valued at Rs 400/- in place of Rs 325/- per kata.

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The defendant states that the structures should be valued at Rs 2710/- as those structures were valued in 1937. He further states that the valuation of the land underneath those structures should be Rs 325/- per katta as it was valued in 1937.

My first report was submitted on 20.9.37 and my subsequent report was submitted on 17.12.37. According to agreement of all the parties the structures were valued at Rs 2710/- and land was valued at Rs 325/- per katta.

The said Rajobala Dasi occupied this southern portion of the building and no substantial repairs were done by her as result of which the condition of the Rooms nos 4,5,6 with verandas attached to Rooms 5 and 6 has become dilapidated and those rooms have become unfit for use. The said Rajobala Dasi died in January 1955 and since then the plaintiff has been using the first floor of the Room no 9 as a bed room which was also used by her as her bed room. In general the condition of all other rooms has become much worse. The defendant submits that during the period of 20 years i.e. since the time of the commissioner's first report dated 20.9.37 upto 19.8.57 i.e the latter being the date of the sitting when he made the statements the old building has become much order and sustained natural decay a result of which cracks have occurred in the Khilans from top to bottom. The plaintiff also valued the said structures at the present market rate at Rs 700/- in place of Rs 2710/-.

From the statements made on behalf of the plaintiff as well as

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as well as on behalf of the defendant it seems to me that the valuation of the structures has deteriorated owing to the lapse of more than 20 years.

Now the question is what should be the depreciation owing to the said deterioration? The plaintiff suggests that the valuation should be reduced from Rs 2710/- to Rs 700/-. The defendant has stated that the condition of the structures has become much older and sustained natural decay as a result of which cracks have occurred in the khilans from top to bottom but without making any consideration for the said deterioration he has suggested that the Valuation should be Rs 2710/- as was settled twenty years ago. When the defendant has stated that owing to lapse of 20 years the condition of the structures has to much deteriorated that cracks have taken place in the khilans from top to bottom, he ought to have made some sort of concession as a way of depreciation for the said deterioration of the condition of the structures,

Now let me consider what depreciation should be allowed for the said deterioration and what should be the valuation of the structures.

The condition of the rooms nos 4 & 6 has so much deteriorated that those rooms have become unfit for use and they are beyond repairs and as such they have got practically no value. The building is very old. The old rotten materials may be sold as rubbishes subject to the cost of dismantling and I think that Rs 50/- may be effected on such disposal.

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The room no 5 is a service privy with one seat in the ground floor and another seat in the first floor. This is also very old and is in a dilapidated condition. The valuation of the service privy of both the floors may be ₹ 100/-.

The room no 7 is the stair case measuring ~~144~~ 144 sft and the portion to the west of it is a small room measuring 78 sft. The condition of these two rooms appears to be little better and as such the Valuation of these rooms may be ₹ 2/- per s ft and the valuation amounts to ₹ 444/-.

The Room no 8 is a verandah to the west of Room No 9. The first floor of Room No 9 was used by Rajobala Dasi as her bed room. The Khilans of these two rooms nos 8 & 9 have cracked from top to botton down to the ground floor. Thorough repairs shall have to made to these rooms for making them fit for dwelling purposes. The area of Room no 8 is 72 s ft and that of Room no 9 is 146 sft. The valuation of Room No 8 may be ₹ 3/- per sft amounting to ₹ 216/- and that of Room No 9 may be per sft amounting to ₹ 584-0-0.

P32.

The room no 10 is an one storied room. The khilans have cracked and the roof is damaged. The ~~khilans~~ condition of this room is also bad requiring thorough repairs. The area of this room is 203 s ft. The valuation of this room may be ₹ 2/- per s ft amounting to ₹ 406/-.

The total valuation of the Rooms 5,7 (with the western portion between Room 5 and Room 7.) 8,9,10 as described above amounts to ₹ 100+~~5~~.444+ ₹ 216+ ₹ 584+ ₹ 406 + cost of dilapidated materials of Room 4 & Room 6 being ₹ 50/- = ₹ 1800/-

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The valuation of the land covered by the said structures was settled in my previous reports dated 20.9.37 & 17.12.37 at ₹ 325/- per katta. This time the defendant has valued the said land at ₹ 325/- per katta and the plaintiff has valued it at ₹ 400/- per katta. During the period of last 20 years valuation of land has undoubtedly appreciated. When the question of valuation is being considered now the rate should be higher than that which was twenty years ago. This portion of land having been covered by structures can not be utilised in a more profitable way. The old valuation as suggested by the defendant is not thought to be proper and the increased valuation suggested by the plaintiff is accepted by me i.e. the valuation of the land covered by the structures including the adjoining portion being 2K 9Ch is valued by me at ₹ 400/- per katta and the valuation of the said area of 2k 9ch come to ₹ 1025/-

The plot of land lying to the south of the residential building of the defendant was valued at ₹ 475/- per katta in my said reports dated 20.9.37 and 17.12.37. The plaintiff has now valued this plot of land at ₹ 1500/- per katta while the defendant has valued it at the old rate of ₹ 475/-. As already observed I think that the present valuation of this plot of land should be higher than the valuation arrived at twenty years ago. Though the position of this plot of land is not on any public thoroughfare but on a kocha 8' wide common passage of the parties with the advantages of the

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of the said common passage on the south also and the common tank on the south the valuation suggested by the plaintiff does not seem to be unreasonable in view of the general rise in the price of land. I therefore accept the rate of valuation as suggested by the plaintiff and ~~EXHIBIT~~ calculate the valuation at Rs 1500/- per katta.

P34.

The valuation of "Bashagan" was settled at Rs 200/- per katta in my previous reports dated 20.9.37 and 17.12.37. The plaintiff has not given here any higher rate of valuation nor the defendant has given any suggestion of any increase of the rate of valuation of this plot of land. The position of this plot of land where there is no bamboo at present is in the southern rear portion of the entire homestead land. As there is no suggestion of any increase of rate of valuation from any of the parties I accept the said rate of valuation at Rs 200/- per katta.

As to allotment of residential building left by the deceased mother Rajobala Dasi the plaintiff wants Rooms Nos 9, 8, 7, 5 and 4 and the reason for his suggestion is that he is using Room No. 3 as his bed room which is just to the north of Room No 9 roof of which rests on the same common wall and that the said room no 9 including both ground and first floor is absolutely necessary for him and that it will be highly inconvenient for him if that room no 9 is not allotted to him. He wants room no 8 which is a covered verandah used for going up to the first floor by the stair case room No 7. He wants to take

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He wants to take room no 5 and room No 4 which fall within the straight line produced towards the west from the Southern wall of Room no 7.

The defendant in his $\frac{1}{2}$ share wants Room No 9 and Room No 10 and wants to keep Room No 8 as a common passage for using the stair case Room No 7 and any other portion which may be necessary to make up the half valuation of the entire structures.

It appears that a dispute has arisen between the plaintiff and the defendant about the allotment of this portion of the building inherited by them from their deceased mother the aforesaid Rajobala Dasi. The plaintiff wants Room No 9 (including both the floors) while the defendant also wants the said Room No 9 (including both the floors) together with the next Southern room viz Room No 10 (one storied). One and the same Room No 9 cannot be allowed to both the plaintiff and defendant nor can this room no 9 be conveniently divided into two equal halves between the plaintiff and the defendant.

Therefore I have to consider the question of allotment of the structures here at length which is done below:

According to the valuation arrived at by me as above the total valuation of all the structures amounts to Rs 1800/- and the valuation of land is Rs 1025/-. Total valuation is therefore Rs 2825/-. The plaintiff is entitled to property of the valuation of Rs 1412-8as while the defendant is also entitled to the property of the same value of Rs 1412-8as and each party is



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each party is entitled to get structures of the value of Rs 900/- and land of the value of Rs 512-8as.

If the suggestion of allotment made by the defendant is accepted the valuation of the portions wanted by him stands thus.

Room No 9 =	Rs 584/-
Room No 10 =	Rs 406/-
$\frac{1}{2}$ valuation of Room 8 =	Rs 108/-
" " Room 7 =	Rs 144/-
	Rs 1242/-

and the valuation of the structures remaining for the allotment of the plaintiff will be thus:

$\frac{1}{2}$ Valuation of Room No 8 =	Rs 108/-
$\frac{1}{2}$ valuation of Room No 7 =	Rs 144/-
Western portion of Room No 7 =	Rs 156-0-0
Room No 5	= Rs 100-0-0
Rubbish from Room 4&6	= Rs 50-0-0
	Rs 558-0-0

If the suggestion of allotment made by the plaintiff is accepted the valuation of the portion wanted by him stands thus:

Room No 9 =	Rs 584-0-0
Room No 8 =	Rs 216-0-0
Room No 7 =	Rs 288-0-0
West portion of Room no 4 =	Rs 156-0-0
Room No 5:	Rs 100-0-0

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Rubbish from Room

no 4. = Rs 25-0-0

Rs 1368-9-0

and the valuation of the structures remaining for the allotment of the defendant will be thus:

Room No 10 = Rs 406/-

Room No. 6 (Rubbish) = Rs 25/-

Rs 431/-

The plaintiff wants in his allotment structures of the value of Rs 1369-0-9 and suggests that the defendant may be given structures of the value of Rs 431/-.

The defendant wants in his allotment structures of the value of Rs 1242/- and suggests that structures of the value of Rs 558/- may be allotted to the 1/2 share of the plaintiff

The plaintiff has wanted in his allotment structures the value of which is more than three times of the value of the structures suggested for allotment in favour of the defendant. The defendant has also wanted in his allotment structures value whereof is more than double of the value of the structures suggested to be given to the 1/2 share of the plaintiff. It is apparent that the parties could not make suggestions for two allotments which would be accurately on approximately equal in value.

From the position of the structures a third alternative appears to me for consideration viz.

Rubbishes of Room No. 4 & 6 = Rs 50



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Room No 5 = Rs 100/-
 Western portion of Room no 7 = Rs 156/-
Rs 306/- in one allotment

and the following rooms in another allotment:

Room No 7 = Rs 288-0-0
 Room No 8 = Rs 216-0-0
 Room No 9 = Rs 584-0-0
 Room No 10 = Rs 406-0-0

Here also the two portions for two separate allotments do not because equal in value; the valuation of one allotment is about five time of the valuation of the other.

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If an attempt be made to make the two allotments equal in value the Rooms No 9 and 10 may be allotted to one party at a valuation of Rs 990-0- and the rest of the structures may be allotted to the other party at a valuation of Rs 810/- . In that case the verandah Room No 8 (which serves the purpose of access to the said rooms 9 & 10) together with the stair case room 7 go to the allotment of the other party and in that case these two rooms 9 & 10 will have no stair case and access room like Room No 8 and still more the party getting Room No 9 & 10 will have to pay an owelty money of Rs 90/-.

Thus I have considered the different allotments as suggested by the plaintiff and the defendant and also considered 2 other possible alternative allotments. From consideration of all the alternative allotments it seems to me that this portion of the building can not be ~~xxxxx~~ conveniently allotted in two equal portions to the two parties. The suggestion of the plaintiff does not seem to be reasonable as the portion

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portion remaining for allotment in favour of the defendant becomes too narrow as the width of the allotment suggested by the plaintiff to be made in favour of the defendant is about 16' and if 4' open space be left out on each side the coverable space does not exceed 8' in width and no suitable building can be erected on 8' ft wide land. The suggestion made by the defendant does not also seem to be reasonable in as much as the plaintiff who is enjoying the Room No 3 lying just to the north of Room No. 9 roof of Room No 3 resting on the Common wall (Contd.....)

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S.S. Das
 S.S. Das
 Typist.
 13.5.59.

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(P. 39) between room No.3 and 9, does not get the room No.9 but is given $\frac{1}{2}$ share in the stair case Room No.7 and the access verandah Room No.8 at its half valuation without getting any advantage of the use of those two rooms Nos. 7 and 8; and the room No.5 being a service latrine of the value of Rs 100/- will have to be replaced by a sanitary latrine and the plaintiff practically gets no usable portion of the structures excepting the small narrow room lying attached to the west of Room No.7.

From the consideration of all the above mentioned different alternative it seems to me that without dividing the said portion of the building having only 27'ft width into two portions the entire structures should be allotted to one party and owelty money should be awarded to the other party.

Now the question arises as to who is to be allotted the said portion of the building. It appears that the plaintiff Kartick Chandra Das Ghati is residing in the northern portion of the said building in his own share while the defendant is living in a separate independent building newly erected by him on the front land of this premises No.4 Santrapara Lane, and that his said residential building is about one hundred ft. off from this portion of the old ancestral building. From the suggestions made by the plaintiff it appears that he is eager to take the portions of the building contiguous to the portions he is enjoying

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in khas and suggests that the portions further off to the south may be allotted to the defendant. I have already observed that the portions suggested by the plaintiff for allotment to the defendant is very narrow having a width of 16' only from which 4' wide space has to be kept open on each side leaving only 8' wide land for construction of building.

When the plaintiff has wanted to get structures at the value of Rs 1369/- he has to pay an owelty money of Rs 469 and I think he should not grudge if he be asked to take the entire structures and pay a further sum of Rs 431/- as owelty. Of course he will have to pay an owelty money of Rs 512-8- on account of the value of the land which automatically comes to his allotment. The total owelty money amounts to Rs 1412-8as which the plaintiff shall have to pay on account of value of the structures and the land if the allotment be made in the time discussed above. I therefore allot the entire structures to the plaintiff at the above mentioned valuation of Rs 1800/- and land of this portion having an area of 2 K 8 Ch for the valuation of Rs 1025/-. The total valuation of the land and structures thereon amounts to Rs 2825/- and the defendant shall get half of the said valuation of Rs 2825/- amounting to Rs 1412-8 as. from the plaintiff as owelty money.

Next I shall deal with the plot of land lying just to the South of the defendant's residential building.

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(P. 41) This plot of land is vacant and has got frontage on the 8' wide common passage which starts from centre Sinthee Road on the north and proceeds further towards the east as well as the west after by farcation.

The valuation of this plot of land has been found above by me at Rs 1500/- per Katta. The area of this plot of land is 2 K 9 Ch 6 1/2 Sft and the valuation amounts to Rs 3657-4-8 Each of the parties is entitled in his 1/2 share to get land of the value of Rs 1928-10-4p. and in each share the area is to be 1 K 4 Ch 25 1/2 Sft.

AS to Allotment.

The defendant wants the half portion of this plot of land from the northern side in continuation of his residential portion. The plaintiff wants his half share in continuation of his allotment. The plaintiff has got his allotment to the south and west of this plot of land and the defendant has got his residential building to the north of this plot of land. The area of 2 K 9 Ch 6 1/2 Sft of land may be divided half and half between the plaintiff and the defendant without causing any inconvenience to any one of them. I therefore think it quite reasonable to allot the northern half portion to the defendant and the southern half portion to the plaintiff by dividing the frontage on the 8' common passage into two equal halves. The area being divided half and half no question of owelty money arises in this

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case. In each share the area allotted is 1 K 4 Ch 25 $\frac{1}{4}$ Sft. Though there was a big difference of valuation between the plaintiff and the defendant it does not matter much though I have found the valuation at the rate of Rs 1500/- per Katta as suggested by the plaintiff inasmuch as the total area has been divided equally according to the convenience and in continuation of the respective possession of each of the parties.

Now remains the portion of the "Bashbagan" to be dealt with. This is a plot of land lying in the south-eastern most portion of the premises No.4 Sentrapara Lane.

I have accepted the valuation of this plot of land at Rs 200/- per Katta as noted above.

As to allotment the defendant does not like to take any portion of it. The plaintiff also is not willing to take his share of his portion of land. Though neither party is willing to take allotment here it cannot be kept in obeyances it has to be given to one of them or both of them when the work of partition is being done at the instance of the plaintiff I think he cannot avoid it. The area being 2 K 5 Ch 6 $\frac{1}{4}$ Sft. should not be divided half and half. Accordingly this portion of "Bashbagan" is allotted to the plaintiff Kartick Chandra Das Ghatai at the valuation of Rs 200/- per Katta.

The total area of this portion of Bashbagan in the share of the deceased Rajobala Dasi is 2 K 5 Ch 6 $\frac{1}{4}$ Sft.

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and the valuation thereof is Rs 464-6as.

P. 43)

As the entire area of 2 K 5 Ch. 6 $\frac{1}{2}$ Sft. is allotted to the plaintiff he shall pay to the defendant on owelty money of Rs 232-3 as which is the half of the full value of Rs 464-6 as.

(7.) 12 centre Sinthee Road Premises (Plan No. 4)

This is a small plot of land of a triangular shape of the area of 3 K 4 Ch. lying in the northernmost end of the premises 12 centre Sinthee Road.

The defendant submits that in view of the peculiar triangular character this plot of land is not fit to be divided half and half between the plaintiff and the defendant and as such this portion may be allotted to one of the parties at the old valuation. In the same sitting subsequently the defendant submits that if the plot can not be allotted conveniently to both the parties the valuation should be settled at the present market value if it be allotted to one of the parties and the learned pleader for the defendant submits that he does not intend to give any rate of valuation and leaves it to the discretion of the commissioner. The plaintiff submits that it would be better to sell the said portion otherwise it should be valued at Rs 200/- per Katta instead of valuing it at the previous old rate of Rs 32/- per Katta and partly at Rs 75/- as accepted by the Commissioner in his report dated 23.9.37.



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It appears to me that this small plot of land of the area of 3 K 4 Ch which looks like a flag as the eastern boundary line and the western boundary line have met at a point in the northern end is not fit to be divided half and half between the plaintiff and the defendant and as such it has to be allotted to one of the two parties.

The defendant's suggestion on valuation is that it should be valued at the old rate i.e. the extreme back 5th belt was valued at Rs 32/- per Katta and the 4th belt was valued at Rs 75/- per Katta and this small portion of the premises No.12 centre Sinthee Road is covered by the 5th belt and part of the 4th belt and hence according to the old valuation this plot of land is valued at Rs 91-5as and Rs 65-0-4 p. totalling Rs 156-5-4 p.

The plaintiff's submission on valuation is that the said plot of land should be valued at Rs 200/- per Katta. According to the said rate of valuation the valuation comes to Rs 650/-.

It appears that the valuation suggested by the plaintiff is more than four times of the valuation suggested by the defendant. According to the old valuation as suggested by the defendant this plot land is valued at Rs 156-5-4 while according to the suggestion of the plaintiff the valuation comes to Rs 650/-. Of course there is a further suggestion on behalf of the defendant that the defendant does not give



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any rate of valuation and leaves it to the discretion of the Commissioner. I think that the value of land must have appreciated since the time of my previous reports of 1937. The very irregular shape of this particular plot of land which looks like a flag cannot be expected to fetch proper value inasmuch as a substantial portion of the plot in the rear will not be possible to be utilised for building purposes and in general the plot is not a good building plot and has got no road frontage and connected to the 12' wide common passage. Hence I accept the valuation as submitted on behalf of the plaintiff that is the rate of valuation accepted by me is Rs 200/- per Katts.

Next as to allotment the defendant submits that in view of the peculiar triangular character the said plot of land is not fit to be divided half and half between the plaintiff and the defendant and as such the said plot may be allotted to one of the parties.

The defendant does not say whether he is willing to take in his allotment this plot of land at the old valuation i.e. at Rs 156-5-4 or at the valuation which may be found by the Commissioner. All what may be understood from the defendant's submissions on the points of valuation and allotment is that if it be allotted to him it should be allotted to him at the old rate of valuation and his later submissions of leaving the point of valuation to the discretion of the

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(P. 46) the Commissioner suggests that if it be not allotted to the defendant at the old valuation it may be allotted to the plaintiff at a higher valuation as may be found by the Commissioner according to his own discretion. I have accepted above the valuation given by the plaintiff which is more than four times of the valuation given by the defendant. The defendant has not expressed his willingness to take this irregular shaped plot at the valuation of Rs 200/- per Katta when it was suggested by the plaintiff after the suggestion was made by the defendant but the plaintiff can not say that he will not take the allotment at his own valuation. Moreover, this plot of land was included in the allotment made in favour of Kartick Chandra Das Ghati then defendant No.2 (now the plaintiff) in the Commissioner's previous reports dated 20.9.37 and 12.12.37 and the allotments made in those reports were accepted by the present plaintiff and also the other two parties viz. the present defendant Atul Krishna Das Ghati and Rajobala Dasi. Hence now I allot this plot of land to the plaintiff at his own valuation i.e. at Rs 650/-. The defendant shall get Rs 325/- as owelty money from the plaintiff for his half share of this plot of land.

(B) Purba Sinthee land (plan No.3).

The is a plot of land being the middle portion of the premises No.110 Purba Sinthee Road in the Mouza Purba Sinthee



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within the South Dum Dum Municipality Pargana Panchannagram Touzi No. $\frac{1298}{2833}$ Khatian No. 56 and under C.S. Dag Nos. 809, 810, 811, 812, 813, $\frac{808}{984}$. When this entire property was partitioned in 1937 it was stated by the parties that the entire land was under their khas possession though there appeared a Sub-khatian in the name of a tenant. The land was measured by me as shown by the parties and a plan was prepared by me of the same.

The total area of the land was 17 K 6 Ch. and 40 Sft.

The plot was divided amongst Rajobala Dasi the then plaintiff, Atul Krishna Das Ghati and Kartick Chandra Das Ghati. The eastern portion was allotted to the said Atul Krishna Das Ghat and the western portion was allotted to Kartick Chandra Das Ghati and the middle portion was allotted to Rajobala Dasi.

After the said allotment the parties took possession of their respective allotments.

Now the land obtained by Rajobala Dasi has to be divided half and half between the plaintiff Kartick Chandra Das Ghati and the defendant Atul Krishna Das Ghati. Sittings were held for taking suggestions on valuation and allotment. The defendant submitted that the old valuation should be maintained and the defendant should be given his half share from the eastern side which would be contiguous to his own allotment and that the western half portion should be

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given to the plaintiff as he has got his own allotment to the west of the mother's middle allotment.

The defendant's suggestion on valuation is that the valuation should be at the old rate that is at the rate at which the valuation was calculated by the Commissioner in his reports dated 20.9.37 and 17.12.37. On the other hand the plaintiff's suggestion is that the valuation should be calculated at the present market rate. But the plaintiff has not given any definite rate of valuation. When the land left by Rajobala Dasi is divided half and half between the plaintiff and the defendant it does not matter much whether the present market valuation or the old valuation is accepted. However, I have made the allotment on the basis of the old valuation.

The plaintiff has made a submission that in order to save the property and to get it property recorded in the Revisional Settlement he had to spend money on account of lawyer's fees, costs of taking copies of documents from the Municipality, filing case in settlement Court and as such he is entitled to get half share of the said expenses from the defendant. The learned pleader for the defendant submitted that the defendant had objected to pay share of the expenses as the plaintiff had no locus standi to start any proceedings for the preservation of the property in suit as a Receiver had already been appointed for the said purpose. I think

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that the plaintiff should approach the Receiver for the costs if any incurred by him.

The area of the middle allotment left by late Rajobala Dasi is 5 K 4 Ch 35 Sft and the valuation thereof is Rs 546-15-10 p. and in each half share the area becomes 2 K. 10 - 17 1/2 Sft and the valuation of each share is Rs 273-7-11 p.

For the convenience of enjoyment the half portion is allotted to the plaintiff Kartick Chandra Das Ghati and the eastern half portion is allotted to the defendant Atul Krishna Das Ghati.

9. Paddy lands at Mouja Garui and Badiapara (Plan No. 6)

In my previous report dated 20.9.37 the paddy lands at mouja Badiapara and Garui were dealt with and partitioned amongst the three parties viz. Rajobala Dasi since deceased and the plaintiff Kartick Chandra Das Ghati and the defendant Atul Krishna Das Ghati according to their respective shares.

There is the said report dated 20.9.37 4 plots of paddy land and 2 plots of paddy land at mouja Badiapara and Garui respectively were partitioned amongst the then parties viz.

- (P. 50)
- 1) Late Rajobala Dasi
 - 2) Atul Krishna Das Ghati and
 - 3) Kartick Chandra Das Ghati
- but no demarcation was made nor the parties took delivery of possession according to their respective allotments as done in respect of some other properties. Therefore all the plots of land in those two moujas (1) Badiapara and (2) Garui are taken up here for

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partition between the plaintiff and the defendant in two equal shares.

Let me take up the lands at Garui first.

There were two plots of paddy land viz. c.s. Dag 1196 and 1275 in Khatian No. 26 under Touzi No. 164, 63, Rent payable Rs 6-15-3 to Jitendriya nath Basu and others - Rayat Sthitiban.

The parties stated at the time of the aforesaid report dated 20.9.37 that though there was a sub khatian No. 27 under the said Khatian 26 in the name of one tenant there was no such tenant in possession and the lands were there in khas possession of the parties to the suit. Accordingly the two plots at Mouja Garui were divided amongst the said three parties.

Now in these commission proceedings the position of the said two plots has changed out of the said two c.s. Dags one Dag viz. 1196 has

(continued)

Typed by.

K.K. Basak
K.K. Basak
2-5-59.

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been acquired by Government in connection with the erection of masts around the Garui transmitting station. But by a petition the plaintiff stated subsequently that the entire C. S. Dag No. 1196 has not been acquired but about 9k. 1ch. has not been acquired and in that petition dated 18.3.39 it was submitted that the said 9k. 1ch. might be included in these commission proceedings. Accordingly the said 9 k. 1ch. was measured by me and plan prepared thereof. The parties further submitted in modification of their statements at the time of the previous reports dated 20.9.37 and 17.12.37 that the entire 16 annas of those two c. s. Dags 1196 and 1275 did not belong to them as was held in those reports and that the parties have got eight annas of those 2 plots and the other eight annas share belongs to Jogendra Nath Das their cousin and his co-sharers and as such in these commission proceedings the half share of those two plots of land as possessed by the parties by mutual arrangement with their cousin Jogendra Nath Das Ghati & his co-sharers. Accordingly half of the said C. S. Dag 1275 and half of the remaining 9k. 1ch out of C. S. Dag 1196 are taken up for partition and partition is made thereof in two equal shares between the plaintiff & the defendant.

. 52).

The western half portion of the said 9k. 1ch of c. s. Dag 1196 i.e. 4k. 8ch. 22 $\frac{1}{2}$ sft. is divided half and half the western portion being allotted to the plaintiff and the eas-

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eastern portion being allotted to the defendant. The valuation of these lands is fixed at old rates as accepted in my reports dated 20.9.37. and that rate is Rs. 40/- per bigha. The valuation of 9k. 1ch. is Rs. 18-2- and in half share of it the parties have 4k. 8ch. 22½ sft and the valuation thereof is Rs. 9-1a. The plaintiff is allotted 2K. 4ch. 11½ sft. and valuation thereof is Rs. 4-8-6p. The defendant is allotted 2K. 4ch. 11½ sft and valuation thereof is Rs. 4-8-6p.

As to the other c. s. Dag 1275 the northern half portion is partitioned. The valuation of half the area at Rs. 40/- per bigha is calculated at Rs. 52-5-6p and the area is 13 ch. 2½ chh. The said half portion, the other half being in possession of their cousin Jogendra Nath Das Ghati & his co-sharers by mutual arrangement, is divided between the plaintiff and the defendant. The plaintiff is allotted 13K. 1ch. 17 sft and the valuation thereof is Rs. 26-2-9p. The defendant is also allotted 13K. 1ch. 17 sft and the valuation thereof is Rs. 26-2-9p.

There are 4 c. s. Dag at Mouja Badiapara Viz. C. S. Dag 243 under khatian No. 70. C. S. Dag No. 267 under khatian No. 71, C. S. Dag No. 394 under Khatian No. 73 and C. S. Dag No. 317 under khatian No. 344 of Mouja Badiapara J. L. No. 17 Rev. survey No. 7 P. S. Dum Dum within south Dum Dum Municipality Pargana Panchannagram Dist. 24-Parganas.

As to valuation the parties agreed to the old valuation

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valuation as per report dated 20.9.37 which is accepted by me as below :

The C. S. Dag 317 area 17 K. 12 ch. 24 sft is valued at Rs. 75/- per bigha amounting to Rs. 66-10-9p.

The C. S. Dag 243 area 10K. 12 ch. 37 sft. is valued at Rs. 60/- per bigha amounting to Rs. 32-6-6.

The C. S. Dag 267 area 1B. 11K. 10ch. 13 sft is valued at Rs. 60/- per bigha amounting to Rs. 94-14-9p.

The plot C. S. Dag 394 area 1B 7K 7ch. is valued at Rs. 60/- per bigha amounting to Rs. 82-5a.

The pleader for the defendant submitted that the plots should be divided half and half between the plaintiff and the defendant. The plaintiff also agreed to the proposal made on behalf of the defendant.

Therefore accepting the suggestions of the parties I divide each of the said four C. S. dags into two equal portions and thereby each party gets equal half portion of each c. s. Dag and the valuation of each party's allotment becomes equal and no question of owelty money arises in each of the 4 cases.

P. 54).

The plaintiff is allotted the half portion of C. S. Dag 317 which is 8K. 14ch. 11 sft in area and shown in crimson lake colour borders and the valuation thereof is Rs. 33-0-4p.

The defendant is allotted the other half portion of the said C. S. Dag No. 317 which is similarly 8K. 14ch. 11 sft in



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in area and shown in vermilion colour borders and the valuation thereof is Rs. 33-5-4½p.

The plaintiff is allotted the half portion of C.S. Dag No. 243 which is 5K. 6ch. 18½ sft. in area and shown in crimson lake colour borders and the valuation thereof is Rs. 16-3-3p.

The defendant is allotted the other half portion of the said C. S. Dag 243 which is similarly 5K. 6ch. 18½ sft in area and shown in vermilion colour borders and the valuation thereof is Rs. 16-3-3p.

The plaintiff is allotted the half portion of C. S. Dag no. 267 which is 15K. 13ch. 6½ sft in area and shown in crimson lake colour borders and the valuation thereof is Rs. 47-7-4½p.

The defendant is allotted the other half portion of the said C. S. Dag 267 which is similarly 15K. 13ch. 6½ sft in area and shown in vermilion colour borders and the valuation thereof is Rs. 47-7-4½p.

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The plaintiff is allotted the half portion of C.S. Dag No. 394 which is 13K. 11ch. 22½ sft in area and shown in crimson lake colour borders and the valuation thereof is Rs. 41 - 2- 6p.

The defendant is allotted the other half portion of the said C. S. Dag 394 which is similarly 13K. 11ch. 22½ sft in area and shown in vermilion colour borders and the valuation thereof is Rs. 41-2-6p.

10. There is a mourashi rakerari jama annually payable in

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annually payable in respect of Premises No. 6 Santrapara lane.

The defendant submits that the said sum of Rs. 6/- be divided half and half between the plaintiff and the defendant. The plaintiff submits that the said jama of Rs. 6/- should not be divided half and half and it should be allotted to one of the parties.

Before considering the question of allotment I think the valuation of the said jama of Rs. 6/- should be settled. Neither of the parties has given any valuation of the same. But I think that the said jama of Rs. 6/- has got a capitalised value which in my opinion should be at least Rs. 50/-.

P. 56).

When the plaintiff and the defendant do not agree about the allotment of this jama I think that such a small jama need not be divided half and half and there may be complications in the matter of realisation of the said rent from the different tenants by both the plaintiff and the defendant. Hence I think that this jama should be allotted to one of the parties at the said valuation of Rs. 50/-. I allot this entire jama of Rs. 6/- to the defendant at Rs. 50/- and the plaintiff shall get Rs. 25/- as owelty from the defendant on this account.

The movables left by late Rajokala Dasi were divided in kind according to valuation & possession was delivered.

The following articles were put to bid between the plaintiff and the defendant.

- 1) Iron almirah sold to Dft at Rs. 230/-
- 2) One big wooden box sold to Dft at Rs. 75/-

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- 3) One wall clock less repairing cost at Rs. 15/-
 - 4) One 'asan' carpet at Rs. 2/-
- Total... Rs. 342-0-0
- 1) Chhaparkhat - sold to plaintiff at Rs. 10/-
 - 2) One 'toshak' at Rs. 5/-
- Rs. 55/-
- Total Rs. 397-0-0

AS a result of it the defendant shall pay Rs. 143-8as to the plaintiff and the plaintiff shall get the same sum of Rs. 143-8as from the defendant in order to equalise the value of the two equal shares of the plaintiff & the defendant.

Schedule A.

The properties partitioned and the valuation thereof.

- 1. Premises No. 12/1/1 Seven tanks lane :
Area : 13K 1ch 6 sft : valuation - Rs. 1684-0-11p
- 2. Premises No. 152 (old 40) Kalicharan Ghosh Road
Area : -10K 3ch 41½ sft : Valuation - Rs. 3774-13-2 2/3p.
Structures " Rs. 1034-0-0
Total Rs. 4808-13-2 2/3p.
- 3. Premises No. 4 Santrapara Lane.
Area :- 7K 7Ch. 13½ sft. valuation - Rs. 5346-10-8p
Structures " Rs. 1800-0-0
Rs. 7146-10-8p
- 4. Premises No. 12 Centre Sinthee Road.
Area: 3K.4ch-0 valuation - Rs. 650-0-0
- 5. Purbasinthee Land :
Area :- 5 K 4Ch. 33 sft. valuation - Rs.546-15-10p.

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6. Paddy lands :

Mouje Garui

Area : 1B 10K 11ch. 11½ sft, Valuation - Rs. 61-6-6p.

Mouja Hadiapara

Area : 4B 7K 10Ch 27 sft, valuation - Rs. 276-5-0

7. Mourashi tenanted jama at 6 Santrapara Lane.

Annual rent Rs. 6/- valuation - Rs. 50-0-0

Total valuation - Rs. 15224-4-1 2/3p.

P. 58).

It is to be noted that in the dwelling house of the parties at 4 Santrapara Lane some portions of the said premises are enjoyed by the parties in ejmali with their cousin Jogendra Nath Das Ghati & his co-sharers viz - (1) Jogendra Nath Das Ghat (2) Prityunjoy Das Ghati (21) Dhananjoy Das Ghati (2 11) Sanjoy Das Ghati, (2111) Manojoy Das Ghati (2.2111) & four sons of late Bepin Behari Das Ghati (3) Kishori Mohan Das Ghati (31) Marari Mohan Das Ghati (3-31) two sons of late Gourhari Das Ghati and those portions are :

Common passages as shown in the partition plan ejmali tank and banks of the said tank as shown in the partition plan.

The area of the common passages are 5A. 6ch. 12 sft. The area of the tank with ejmali banks is 16A. 9ch.

According to the shares of the parties to the suit and their cousin Jogendra Nath Das Ghati & his co-sharers the plaintiff and the defendant together have got half share of the said common passages and the ejmali tank and the ejmali banks of the said tank. Hence the plaintiff and the defendant are



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are equally entitled to the half share of the said areas covered by the common passages and the ejwali tank and banks thereof.

Schedule B.

The properties allotted to the plaintiff Kartick Chandra Das Ghati in his half share with valuation thereof:

1. Premises No. 12/1/1 Seven tanks lane:

No portion of it is allotted to the plaintiff.

He shall get owelty money of Rs. 842-0-5 $\frac{1}{2}$ p from the defendant on this account.

2. Premises No. 152 (old 40) Kali Charan Ghosh Road.

Area allotted :- 5k. 10ch. 14 $\frac{1}{2}$ sft

Valuation thereof - Rs. 1887-6-7 $\frac{1}{3}$ p

No portion of structure is allotted to plaintiff for which he shall get from the defendant owelty money of Rs. 517-0-0

3. Premises No. 4 Sutra para lane.

Said Area allotted in the building portion - 2k 9ch - valuation - Rs. 1025/-

Valuation of structures allotted - Rs. 1800-0-0
Rs. 2825/-

He shall pay owelty money to the defendant Atul Krishna Das Ghati amounting to Rs. 1412-8as.

Area allotted re: plot of land lying just to the south of the building of the defendant - 1k 4ch 25 $\frac{1}{2}$ sft valuation Rs. 1928-10-4p

Area allotted re: "Beshlagan"

2K 5ch. 6 $\frac{1}{2}$ sft; valuation - Rs. 464-6as.

The plaintiff shall pay to the defendant owelty money amounting to Rs. 232-3as.

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4. Premises No. 12 Centre Sinter Road.

Area allotted - 3K 4ch - valuation - Rs. 650-0-0

The plaintiff shall pay to the defendant owelty money amounting to Rs. 325/-

5. Purbasinter land :

Area allotted :- 2K 10ch.17 1/2 sft, valuation Rs. 273-7-11p

6. Paddy lands :

Mouja Badiapara
Mouja Garui.

Area allotted: 15K 5ch.28 1/4 sft, valuation Rs.30.11.3p

Mouja Badiapara.

Area allotted : 2B 3K 13ch.13 1/2 sft, valuation Rs. 138-2-6p

7. Mourashi nokarari jama at Premises No.6 Santrapara lane

The pliff shall get from the deft owelty money amounting to Rs. 25/-

Total valuation of allotments - Rs. 8197-12-7 1/3p

The pliff shall get owelty money amounting to Rs. 1384-0-5 1/2p

Rs.9581-13-5/6p.

The pliff shall pay owelty money amounting to Rs.1969-11-

Rs. 7612-2-5/6p.

Schedule A.

The properties allotted to the defendant Atul Arishna Das Chati in his half share with valuation thereof:

1. Premises No. 12/1/1 Seven tanks lane :

The entire portion is allotted :

Area : 13K. 1ch. 6 sft: Valuation - Rs. 1684-0-11p.

The defendant shall pay to the plaintiff on this account owelty money amounting to Rs. 842-0-5 1/2p.

2. Premises No. 152 (old 40) Kalicharan Ghosh road

Area allotted : -4-9-26 1/2 sft ; valuation - Rs.1887-6-7 1/3p.

The entire C.I.structures allotted to deft : Valuation 1034-0

The deft shall pay to the pliff owelty money amounting to Rs. 17-0

3. Premises No.4 Santrapara lane :

No portion of the land building portion & no structures

FOUR ANNAS

tion for	Date fixed for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.

-10-

structures are allotted to the deftd and on this account the deftd shall get from the plff owelty money amounting to ~~1428~~ Rs. 1412-8as.

Area allotted re: plot of land lying just to the south of the building of the defendant- 1K 4ch. 25 $\frac{1}{2}$ sft valuation-1928-10 4p
Area Re: "Bashhagan"

No portion allotted to Deft.

The deftd shall get from the plff owelty money amounting to Rs. 232-3as.

4. Premises No. 12 Centre Sinter Road.

No portion allotted to defendant.

The deftd shall get from the plff owelty money amounting to Rs. 325/-

5. Purbasinthee land

Area allotted: 1K 10ch. 17 $\frac{1}{2}$ sft. valuation Rs. 273-7-11p

6. Paddy lands :

Mouja Garui.

Area allotted : 15K 5ch. 28 $\frac{1}{2}$ sft, valuation -Rs. 30-11-3p

Mouja adiapara.

Area allotted: 2H. 3A 13ch. 13 $\frac{1}{2}$ sft, valuation-138-2-6

7. Mourashi nokarari Premises No.6 Santrapara lane.

The entire jama of Rs. 67/- annum: valuation - Rs. 50/-

The entire jama being allotted to the defendant he shall pay

to the plaintiff owelty amounting to Rs. 25/-

Total value of allotments Rs. 7026-7-6 1/3p.

The defendant shall get owelty money amounting to Rs. 1969-11-0

Rs. 8996-2-6 1/3p

The defendant shall pay owelty money amounting to Rs. 1384-0-5p

Rs. 7612-2-5/6p.

Yours faithfully,

Sd/. Manoranjan Das Gupta.

Pleader Commissioner.

7. 4. 1959.

Typed by
Typist

2/5/59.