

11.02.2021
Court No. 19
Item No.09
CP

C.O. 253 of 2021

Asgar Ali Mullick
vs.
Arafat Ali Mullick

Mr. Mrinal Kanti Ghosh

.....for the petitioner.

Mr. Md. Nure Jaman
Mr. Mahammad Ali Mallick
Mr. Jahangir Badsha

.....for the opposite party.

This revisional application has been filed by the plaintiff in Title Suit No. 86 of 2020, pending before the learned Civil Judge (Senior Division), Purba Bardhaman. The plaintiff is aggrieved by the order dated January 20, 2021, passed by the learned District Judge, Purba Bardhaman in Misc. Appeal No. 19 of 2020.

Mr. Ghosh, learned advocate for the petitioner, submits that the learned Trial Judge by an order dated October 15, 2020 passed an order of status quo with regard to the nature, character and possession of the schedule property being Plot No. 1726 in Mouza Belanda, P.S. Bhatar, J.L. No. 61, Purba Bardhaman. It is submitted that the learned Trial Judge held that the suit property comprised of 28 decimals, was being enjoyed by both the parties but not amicably. The learned Trial Judge held that as 10 decimals of the property was converted at the instance of the defendant to Bastu, it could be taken

that the construction was done on the entire 10 decimals and not on the 4 decimals which was separately purchased by the defendant. For such reasons, the learned Trial Judge granted a status quo with regard to the nature, character and possession over the entire 28 decimals of land. Aggrieved by the aforementioned order, the defendant filed a Misc. Appeal. The Misc. Appeal was registered as Misc. Appeal No. 19 of 2020 before the learned District Judge, Purba Bardhaman. By the judgment and order dated January 20, 2021, the learned District Judge, Purba Bardhaman allowed the Misc. Appeal, thereby setting aside the order of status quo granted by the learned Trial Court. Aggrieved, the plaintiff has preferred this revisional application.

It is the contention of Mr. Ghosh learned Advocate for the petitioner that the learned lower appellate court allowed the Misc. Appeal on a complete misinterpretation of the plaint. It is submitted that the fact that the defendant as a cosharer was constructing on the entire frontage of the undivided property would be evident from paragraphs 4 and 5 of the plaint. It is further stated that although the defendant alleged to have started the construction only on the 4 decimals of land separately purchased by him with specific boundaries, but the conversion of 10 decimals of land to Bastu would prove that the construction was on the entire 10 decimals which would mean that the

defendant had encroached into the undivided portion of the property by taking away the entire frontage.

Mr. Nure Jaman, learned advocate for the opposite party, submits that by a deed of conveyance executed in the year 1996, 4 decimals of land was purchased by him which had demarcated boundaries. He relies on the said deed and the schedule in support of such contention. Sketch maps have also been produced which shows that the 4 decimals of land in Plot No. 1726 had specific boundaries butted and bounded by a pond, a main road and other houses. Permission from the Gram Panchayat has been relied upon, showing approval for construction of a two storeyed house having an area of 1216.42 sq. ft. on the ground floor and 1265.12 sq. ft. on the first floor. The record of rights have also been produced which show that the defendant was the recorded owner of 20 decimals of the undivided portion, apart from the separately purchased 4 decimals of land and the plaintiff was the recorded owner of 4 decimals.

I agree with Mr. Ghosh on the proposition that the cosharer cannot cover up the entire best portion of the undivided property, but, this is a matter of evidence. On the contrary, the defendant has relied upon certain documents which, prima facie, reveal that the construction is going on over the 4 decimals which was separately purchased by him in 1996. Such purchase is not denied by the plaintiff. The

documents produced by the defendant would prima facie reveal that the defendant has taken permission on the basis of the deeds and documents from all authorities for construction of a dwelling house measuring approximately 1216 sq. ft. on the ground floor and 1265 sq. ft. on the first floor, which does not spread a little more than 1.5 cottahs of land.

Yet, this is a partition suit, the learned lower appellate court could not have decided on the right of the defendant to construct on the suit property without a condition attached to the same.

Under such circumstances, the order the learned District Judge, dated January 20, 2021 is set aside and quashed. The defendant shall be allowed to construct exclusively on the 4 decimals of the land which was purchased on the basis of the deed of conveyance of 1996 from the vendors, Sk. Sahad Ali, Sk Yaad Ali and SK. Hashmat Ali and the boundary of which has been specifically mentioned in the schedule to the purchase deed No.1414 dated November 1, 1996. The defendant shall use the same for his own use and occupation as a dwelling house and shall not alienate the same or create any third party interest thereon. The defendant will also not claim any equity with regard to the said construction and shall undertake to demolish the same in the event the suit succeeds and the portion over which the construction has been made, falls in the share of the plaintiff/petitioner. Such undertaking be filed

before the learned Trial Judge within two weeks. With regard to the maintainability of the suit as raised by the defendant, the defendant has every right to approach the appropriate forum by filing proper applications. This is not an issue to be decided by the revisional court at this stage.

Learned Civil Judge (Senior Division), Purba Bardhaman is requested to proceed with the suit expeditiously and dispose of the same in accordance with law.

The observations made hereinabove are tentative in nature and shall not bind the learned court below.

The revisional application is disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)