

19th July,
2021
(AK)
8

C.O. 529 of 2020

**Sri Vishmodev Maity
Vs.
Biswanath Maity and others**

(Via Video Conference)

Mr. Sukumar Ghosh

...For the petitioner.

Despite service, none appears on behalf of the opposite parties.

Affidavit-of-service filed in court today be kept on record.

The grievance of the petitioner, being the plaintiff in a partition suit, is that, despite seeking adjournment for the purpose of filing of written objection by the petitioner to the partition Commissioner's final Report, the trial court refused to grant such adjournment by the impugned order and accepted the partition Commissioner's Report.

It is contended by learned counsel for the petitioner that such a course of action would deprive the petitioner from taking objections, if any, to the partition Commissioner's Report, which will be made a part of the

final decree almost automatically in view of its acceptance by the impugned order.

It appears upon hearing learned counsel and going through the impugned order that there was sufficient ground for the trial court to refuse adjournment, since the matter has been pending for long and on several occasions adjournments were granted on the prayer of the petitioner.

However, the fact remains that an appeal, if preferred by either of the sides against the final decree of partition, will remain an illusory remedy, since the Partition Commissioner's Report is the most vital component of the final decree of partition and the objections thereto by the present petitioner and/or any cross-examination by the parties of the Commissioner shall not be on record to present the version of the petitioner with regard to the Report before the appellate court.

Although no patent irregularity was committed in passing the impugned order, taking into consideration the last-preceding observations, the court below ought to have given a last chance to the petitioner for filing his written objection to the partition Commissioner's Report, if necessary, by putting the petitioner to terms.

Thus, costs ought to be imposed on the petitioner for having caused unnecessary delay in the matter, thereby harassing the court below as well as the opposite parties.

Accordingly, C.O. 529 of 2020 is allowed, thereby setting aside the impugned order accepting the Partition Commissioner's Report and directing the trial court to grant one last opportunity to the revisionist-petitioner to file a written objection to the Partition Commissioner's Report.

It is made clear that, in the event such opportunity is missed by the petitioner, no further such opportunity shall be given for the purpose of filing written objection to the petitioner by the trial court and the impugned order shall revive without further reference to this court.

The above order is subject to costs of Rs.5,000/- which will be paid by the petitioner to the opposite parties through the latter's advocate appearing in the court below within a fortnight from date.

In the event of default, this order shall automatically stand recalled, also without further reference to this court.

Parties as well as the court below shall act on the written communication of the learned advocate for the petitioner, accompanied by a server copy of this order, without insisting upon prior production of a certified copy.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)