

S/L 7
07.04.2021
Court. No. 19
GB

C.O. 978 of 2020

Mohon Das & Anr.
Vs.
Nabaghana Das & Ors.

(Through Video Conference)

Mr. Sudeep Sanyal,
Mr. Sukanta Das.

...for the Petitioners.

Mr. Debasish Roy.

...for the Opposite Parties.

Affidavit-of-service is taken on record.

This revisional application has been filed against an order dated January 3, 2020 passed by the learned Civil Judge (Senior Division), 3rd Court at Paschim Medinipur in Title Suit No.29 of 2006.

By the order impugned the learned court below accepted the learned Commissioner's report. The suit is a partition suit. The learned court below directed that the final decree be drawn up in accordance with the report of the Pleader Commissioner.

The only contention raised by the defendants Nos. 2 and 3/petitioners before this Court with regard to the acceptance of the report, is that the ground floor which has been allotted to the plaintiffs along with the adjoining land which is a small passage has caused serious prejudice. According to the defendants if the said passage is allotted exclusively to the plaintiff No.1 in that event, the defendants

will not be able to use the said passage for any construction/repairing work. The next contention is that the provisions for separate drainage and sewerage has not been made.

Upon considering these objections raised by the defendants before the learned court below, the learned court below came to the specific finding that the learned Commissioner has kept necessary provisions for drainage system in respect of the allotted portions of the two suit plots on the extreme eastern side of the allotted portion of the defendant nos.2 and 3 and on the adjacent western side of the allotted portion of the plaintiff no.1. From the report it is also revealed that the two drains ultimately met the main drain situated in the northern side of the building along the municipal road. The learned court below also observed that the defendants have constructed their aforementioned building after taking necessary sanction from the municipality and such objection with regard to drainage, sewerage, etc. have been taken care of. The learned court below also observed that the learned Commissioner has also taken care to allot the property in favour of the parties after maintaining convenience of the respective parties therein. With regard to the passage, which has been given as the exclusive share of the plaintiff No.1 the learned court below observed that the said plaintiff shall give permission to the defendants to use the same for repairing work on their

portion by putting scaffolding and other materials on the passage as and when necessary.

According to Mr. Sanyal, the relationship between the parties are not good and as such his clients apprehend such permission may not be granted which might create unnecessary inconvenience and disputes.

Mr. Debasish Roy, learned advocate appearing on behalf of the opposite parties/plaintiffs who have been allotted the ground floor along with the land in question submits that whenever any repairing work is necessary at the premises of the objecting defendants/petitioners, his clients will not object to the same and his client is also willing to give an undertaking to that effect.

Having considered the rival contentions, I do not find any reason to interfere with the order impugned. With regard to the direction of granting necessary permission is concerned, such portion of the order is modified to the extent that the plaintiff No.1 shall allow the objecting defendants to use the passage allotted to the plaintiff No.1 whenever any renovation or repairing work is necessary for the premises allotted to the defendants. Further the defendants Nos.2 and 3 shall also allow the plaintiff No.1 to make necessary repair in the roof etc. of the portion allotted to the plaintiff No.1

The revisional application is disposed of with the above observations and also with a direction upon the plaintiff No.1 to file an undertaking before the learned court below to the effect that he shall not raise any objection and

allow the defendants Nos.2 and 3, who are petitioners before this Court, namely, Mohan Das and Smt. Niva Das to use the passage on the ground floor allotted to the plaintiff for putting any scaffolding or any other building materials at the time of renovation and repairing. The said defendants shall also file an undertaking that the said land will be used only for the purpose of renovation and repairing work and once the renovation and repairing is completed all scaffolding and materials shall be removed and vacant possession shall be delivered to the plaintiff No.1.

The revisional application is disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)