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24.12.2021
Ct. 21
AB

C.O. 631 of 2021
(Via Video Conference)

Smt. Sutapa Mukherjee & Anr.
-Vs-
Shri Kamal Kumar Mukherjee & Anr.

Ms. Kabita Mukherjee,
Mr. Manas Dasgupta,
Mr. Gourav Das,
... for the petitioners
Mr. Tapas Kumar Majumder,
Mr. Partha Pratim Bhattacharya,
... for the opposite parties

Being aggrieved by the order of rejection of report of the commissioner who has been appointed to effect partition of the disputed properties in final form as per preliminary decree the petitioners have filed this revisional application.

Facts giving rise to this revision gist is that the property which is the subject matter of partition suit was owned by one Bhupendra Nath Banerjee. Said Bhupendra Nath Banerjee had a son named Bhupati Banerjee and a daughter named Malay Rani Mukherjee. Bhupendra Nath Banerjee during his life time by executing a will bequeathed the suit property in favour of his son Bhupati and two sons of his daughter Malay Rani Mukherjee. Those two grandsons of Bhupendra were deceased Sanat Kumar Mukherjee, the husband

and father of the plaintiffs/petitioners and the defendant no. 1/opposite party no. 1. Those two grandsons obtained first floor and ground floor of the building owned by Bhupendra Nath Banerjee by virtue of the will.

That father of the deceased Sanat Kumar Mukherjee and defendant no. 1/opposite party no. 1 had left behind a property in Bankura and which they have jointly inherited.

The wife and one of the sons of Deceased Sanat Kumar filed Title Suit No. 1014 of 2010 against the opposite party no. 1 for partition of their joint properties and which was decreed in preliminary form with a declaration that the defendant no. 1 and legal heirs of deceased Sanat Kumar each side having 50% share in the first floor and ground floor of the property situated at Landsdown at Kolkata and another property situated in Bankura.

In the course of argument it has been submitted by both side lawyers that at present the petitioners/plaintiffs are in possession of Landsdown property by occupying the first floor flat and renting out the ground floor. That no one possesses property of Bankura. The defendant no. 1/opposite party is residing in a rented house at Hooghly.

In the light of the above facts let see whether the commissioner has done the partition of joint properties of parties properly?

The report of the commissioner prima facie shows he was more concerned about partition of the property situated at Landsdown, Kolkata than the property situated in the town of Bankura. He in his report merely mentioned that he partitioned the property of Bankura between the parties by allotting each of them 50% share in the same.

The schedule two relates to one storied building along with three cottahs and four chittack land appertaining to holding No. 504/2, Kalitala Road, Bankura. Unfortunately, report is silent about detail descriptions of the one storied building and how he affected partition of such property between the two parties. Which portion of one storied building he allotted to the plaintiffs and which portion he allotted to the defendant no. 1. Therefore, such facts make the commissioner had done his work in a very perfunctory manner and which makes his report unacceptable and constrain this Court to think, whether the Commissioner ever visited Bankura to do the Commission work as assigned by the Trial Court.

Further, it is seen that most conveniently he allotted the flat under the occupation of the plaintiffs to the plaintiffs and the ground floor which has been let

out by the plaintiffs to the tenants and who have been enjoying the usufruct of the ground floor to the defendant no. 1 and without getting the ground floor vacated and putting the defendant no. 1 in possession. Rather, he appears to have burdened the defendant no. 1 with the liabilities to evict the tenants of the plaintiffs.

This Court finds report of the Partition Commissioner not proper and partition being done not as per the preliminary decree. Therefore, this Court does not find any infirmities in the impugned order and reason to set aside the same. The revisional application stands dismissed.

Accordingly, **C.O. No. 631 of 2021 is dismissed.**
Connected applications are disposed of.

Interim order, if any, stands discharged.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied. There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

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

(Kesang Doma Bhutia, J.)