

29th July,
2021
(AK)
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C.O. 699 of 2021

Sri Hemarun Sanyal
Vs.
Sri Hirak Sanyal and others

(Via video conference)

Mr. Arindam Banerjee
Mr. Subhajit Chattopadhyay
...For the Petitioner.

Mr. Saptansu Basu
Mr. Debasish Roy
Mr. Sourav Sen
Ms. Sumitra Das
Ms. Kasturi Tarafdar
...For the Opposite Parties.

Learned counsel for the petitioner contends that, pursuant to a previous order of this court dated November 5, 2019, directing the trial court to proceed with the hearing of the partition suit at the final decree stage, the Trial Judge, by the impugned order, misinterpreted such order and accepted the Partition Commissioner's Report without granting any hearing on the objection and the evidence led in connection with the Commissioner's Report.

Learned senior counsel appearing for the opposite parties contends that, when the previous order of this court was passed, the suit was already at a stage when the Partition Commissioner's Report had been accepted.

By placing reliance on the certified copy of an order dated November 23, 2017, learned senior counsel reiterates such proposition.

However, it appears from the bunch of certified copy of the orders passed in the suit, which is handed over in court today on behalf of the opposite parties, that the trial court merely recorded in the order dated November 23, 2017 that it “appeared” to the court that the preliminary decree in the suit had already been passed and the Report of the learned Commissioner had been accepted.

However, in all fairness, since the entire order sheet has been produced by the opposite parties, a perusal of the said order sheet reveals that the trial court did not hear the matter on merits, upon considering the evidence and objection to the Commissioner’s Report. Hence, the finding recorded in the order dated November 23, 2017 cannot be relied on in such context.

Since it is palpable, from the impugned order dated January 16, 2020, that the trial court proceeded on an erroneous interpretation of this court’s direction dated November 5, 2019 to pass a final decree in the partition suit as expeditiously as possible to connote that the trial court would not give any further hearing on the Commissioner’s Report and/or the evidence or written objection filed in connection therewith, the impugned order suffers from patent jurisdictional error in so far as

the same is neither in consonance with law nor with the real purport of the order of this court dated November 5, 2019.

The Trial Judge was never precluded from giving a hearing to the parties on the evidence and written objection filed in connection with the Partition Commissioner's Report, prior to final acceptance of the Report, which vitiates the impugned orders.

Accordingly, C.O. 699 of 2021 is allowed, thereby setting aside the impugned orders dated January 16, 2020 and the order dated February 8, 2021, directing the Trial Judge to take up the suit for hearing both sides on the Partition Commissioner's Report along with the written objection and evidence filed in connection therewith as early as possible and thereafter to dispose of the suit by passing a final decree at the earliest.

The Trial Judge is requested to complete the entire exercise as directed above and pass the final decree latest within two months from the date of communication of this order to the court below.

The trial court shall act on the written communication of this order by the learned advocate for the parties, accompanied by a server copy of this order, without insisting upon prior production of a certified copy.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)