

AD. 27.
July 28, 2021.
MNS.

C. O. No. 1311 of 2021
(**Via video conference**)

Smt. Mahua Ghosh
Vs.
Sri Suman Ghosh

Ms. Hashnuhana Chakraborty,
Ms. Neelina Chatterjee,
Mr. Suvodeep Chakraborty

... for the petitioner.

The primary grievance of the petitioner is that, despite competent legal forums having finally decided the exclusive title of the petitioner in respect of the property-in-dispute, while rejecting an application filed by the petitioner in a subsequent suit by the plaintiff/husband for occupation charges, the trial court erroneously observed that it is of the considered view that till the disposal of the matrimonial suit both the parties had equal right to peaceful possession and occupancy in the suit property.

However, it is evident from the orders of the arbitrator and the co-operative tribunal, previously passed in connection with the same property, that the property was unequivocally declared to be owned by the petitioner alone,

without the opposite party-husband having any right therein.

Hence, the stray observation in the impugned order regarding both the parties being equally entitled to the property was *ex facie* contrary to records and, as such, perverse.

However, the pendency of the suit need not be prolonged unnecessarily by directing service of notice on the plaintiff-opposite party no. 1 and hearing the matter at length since, in any event, the observations made in the impugned order to the effect that both the parties have equal right to peaceful possession and occupancy in the suit property being tentative, only arrived at only tentatively for the purpose of deciding the petitioner's application for occupation charges. Such findings, whether correct or erroneous, will not have any bearing or finality at any later stage of the suit or any other proceeding.

Hence, C. O. No. 1311 of 2021 is disposed of without interfering with the impugned order on merits, but with the specific rider that all findings made in the said impugned order dated March 31, 2021, particularly regarding the trial court being of the view that, till disposal of the

matrimonial suit, both the parties have equal right to peaceful possession and occupancy in the suit property, are tentative in nature and shall not prejudice the rights and contentions of the parties in any manner in the subsequent stages of the suit or any other proceeding whatsoever.

Since the suit is pending for a considerably long period, the Civil Judge (Senior Division), Fourth Court at Alipore, District- South 24 Parganas, is requested to dispose of Title Suit No. 330 of 2018, pending in the said court, as expeditiously as possible, without granting any unnecessary adjournment to any of the parties, preferably within one year from the date of communication of this order to the court below.

The petitioner shall communicate this order, along with a server copy of this order, to the court below, as well as to the plaintiff-opposite party no. 1 and/or the learned advocate appearing for the said opposite party no. 1 in the court below, at the earliest.

The trial court as well as the plaintiff-opposite party no. 1 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 the certified copy thereof.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)