

17.12.2021
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C.O. 1516 of 2021
Bhaskar Ghosh
Vs.
Smt. Krishna Hajara & Anr.
(Via Video Conference)

Mr. Soumabho Ghosh,
Ms. Anshumala Bansal,
Ms. Tiana Bhattacharya,
... for the petitioner

Mr. Sivraj Gupta,
...for the opposite parties

Assailing the order of status quo passed by learned District Judge, South 24 Parganas at Alipore in Misc. Appeal 108 of 2020 on 01.10.2020, the petitioner defendant has filed the present revisional application.

The facts leading to the present revision is that the petitioner and opposite party no. 1 are brother and sister. They have jointly inherited premises no. 102/B, Block-F, 27 Nalani Ranjan Avenue P.S.-New Alipore, Kolkata 700053.

They partition such inherited property by executing a registered deed of partition on 28.01.2020. The suit property comprised of a three storied building. Subsequent to partition, the petitioner gifted his entire half share on the second floor to the opposite party no. 1 by executing a registered deed of gift. That petitioner is in possession of the entire ground

floor and which he intent to dispose of. That he informed the opposite no. 1 about his intention by giving a preferential notice on 24.02.2020, but opposite no. 1 did not respond to such notice. Then petitioner entered into an agreement of sale with the opposite no. 2 and the petitioner informed about the same to the opposite party no. 1 vide letter dated 24.07.2020. On receiving such letter the respondent no. 1 instituted title suit no. 545 of 2020 and wherein she prayed for interim relief in the form of injunction against the petitioner in the trial court. The trial court after hearing was pleased to refuse to grant the interim relief. Then opposite party no. 1 preferred Misc. Appeal 108 of 2020 before learned District Judge and where she filed an application under order 39 rule 1 & 2 read with section 151 Civil Procedure Code.

The learned District Judge after hearing the above application was pleased to pass the impugned order of status quo on finding that no third party interest can be created in a dwelling house.

Now, let see whether the impugned order suffers from illegality and irregularity as alleged.

It is admitted fact the property in dispute

has already been partitioned between two co-owners, the petitioner and opposite party no.1 by executing registered deed of partition on 28.01.2020. Therefore, the property in question is no more a joint property of the parties after partition. More so it is settled principle of law on partition, the undivided family as a unit comes to an end. Partition automatically alters the character of the property of the family as there will be division of the property which was held jointly by some persons. On partition each person gets his/her share and he/she becomes owner of the share allotted to him and her.

Therefore, this Court is of view on partition of the suit property there remains no concept of jointness. The opposite party no. 1 cannot claim preferential right to acquire the property/share of the present petitioner in the disputed property under section 4 of the Partition Act or under section 44 of the Transfer of Property Act or under Section 22 of the Hindu Succession Act, 1956 .

Had the property remained a joint family property then each co-sharers will have right to enjoy each and every inch of the joint property and to preserve the nature and character of the

property till the same is divided by way of partition amongst the co-sharers there will be a need to keep the property in the status quo position.

Learned District Judge in the impugned order was satisfied the property in question has already been partitioned between two siblings, then at the same time he took the view a third party interest will be created in the partitioned property if the present petitioner transfer the portion which he obtained by way of partition in favour of opposite party no. 2 and thereby he passed the impugned order of injunction in the form of status quo.

Prima facie this Court finds material irregularities in the order passed by the Learned District Judge. Accordingly, the impugned order is set aside.

Accordingly **C.O. 1516 of 2021** is allowed. Connected applications are disposed of. Interim order, if any, stands discharged.

There will be no order as to costs.

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

All parties are directed to act on a server

copy of this order duly downloaded from the official website of this Court.

(Kesang Doma Bhutia, J.)