

16.11.2021
Item No.07
Court No.18
AJ.

C.O. 1520 of 2021
(Via Video Conference)

Sri Arup Kumar Sardar
-Vs-
Smt. Rita Sardar & Ors.

Mr. Tarak Nath Halder.
.....for the petitioner.

Mr. Saunak Bhattacharya.
.....for the opposite parties.

The defendant no.1 in a suit for declaration of title and partition is the petitioner of the present application under Article 227 of the Constitution of India, which is directed against order dated January 03, 2020, April 23, 2021 and August 13, 2021 passed by the 2nd Court of the learned Civil Judge (Senior Division) at Baruipur, District- 24-Parganas (South) in the said suit being Title Suit No. 557 of 2019.

The grievance of the petitioner is that the learned Trial Judge by the order dated January 03, 2020 has allowed an application filed by the plaintiff under Order XXXIX Rule 7 of the Code of Civil Procedure ex-parte.

The further grievance of the petitioner is that he has filed an application praying determination of the issue regarding maintainability of the said suit and the plaintiff filed an application for repair of the suit property. The learned Trial Judge although proposed to

hear the application filed by the petitioner first but by the order No. 25 dated August 13, 2021 allowed the said application for repair of the suit property keeping the application filed by the petitioner pending.

Mr. Tarak Nath Halder, learned advocate for the petitioner submits that the repair work of the suit property was carried out in violation of the order passed by this Court in this matter.

Mr. Saunak Bhattacharya, learned advocate appearing on behalf of the plaintiff/opposite party strongly denies the said contention of Mr. Halder and submits that the local inspection as well as the repair work of the suit property has already been done.

Heard learned advocate for the parties, perused the materials-on-record.

It appears from the record that the learned Trial Judge was proposing to hear out the application filed by the petitioner first but subsequently disposed of the application filed by the plaintiff seeking repair of the suit property keeping the application filed by the petitioner pending. Such change of course in the proceeding of the suit is not appreciated, however, under the changed circumstances; this Court does not feel it necessary to reopen the said issue.

Learned Counsel for the parties inform this Court that December 17, 2021 is the next date fixed in the suit.

C.O. 1520 of 2021 is disposed of with a request to the learned Trial Judge to take up the said application filed by the petitioner regarding maintainability of the suit on the aforesaid date for hearing and to dispose it of within two available effective working weeks of the said Court from the said date.

The plaintiff is at liberty to file written objection to the said application within a week from date.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)