

S/L 6
25.02.2021
Court. No. 19
GB

C.O. 3514 of 2019

Tushar Kanti Guin
Vs.
Kanu Baskey & Anr.

(Through Video Conference)

*Mr. Tapas Kumar Dey,
Mr. Ashis Kumar Dutta.*

...for the Petitioner.

Mr. Prabhjot Singh.

...for the Opposite Party No.1.

This revisional application arises out of an order dated September 3, 2019 passed by the learned Additional District Judge, 1st Court at Chinsurah in Misc. Appeal No.67 of 2017. Misc. Appeal No.67 of 2017 arises out of an order dated October 24, 2017 passed in Title Suit No.489 of 2016 by the learned Civil Judge (Senior Division), Additional Court, Hooghly.

The petitioner is aggrieved because the misc. appeal was allowed and the order of temporary injunction by way of *status quo* with regard to the nature, character and possession of the suit property passed by the trial court was upheld in the misc. appeal. The petitioner is the defendant no.2 in the title suit. The petitioner had purchased 4 decimals of land out of 23 decimals in Plot No.3075, Block-Dhaniakhali, J.L. No.126, P.S. Gurap, District-Hooghly. The petitioner's deed of sale contains the schedule of the

property sold to the petitioner. The deed of sale categorically states that the property sold does not have any co-sharers. The boundaries of the land sold to the petitioner has been demarcated as being butted and bounded by a 8ft. *moram* road in the North, by R.S. Dag No.3081 in the South, house of Kanu Baskey, the plaintiff in the East and a *Danga* in the West. The area has also been marked in red colour with mark 'A' in the sketch map. The said property was purchased by the petitioner by a registered deed of sale on December 2, 2016. When the petitioner started construction on his demarcated portion, the plaintiff/opposite party no.1 filed the title suit for partition.

It was the contention of the plaintiff that the plots of land were not demarcated and they were joint properties and as such, a decree for partition should be granted by the learned court below so that, the parties may enjoy their respective demarcated shares by getting the same partitioned by meets and bounds.

The learned trial judge upon considering the entire matter, came to the conclusion that unless the partition by meets and bounds were effected between the petitioner and the opposite party no.1, the petitioner should be directed to maintain *status quo* with regard to the nature, character and possession of the suit property. While coming to the conclusion, the learned trial judge was of the view that the plaintiff was a *patta* holder in respect of 8 decimals of land in Suit Plot No.3075 measuring 23 decimals and his name

had been duly recorded in the L.R. record of rights under Khatian No.2548. It has also been recorded that the name of the predecessor-in-interest of the vendors of the defendant no.2, was recorded in respect of 4 decimals of land in the suit plot under Khatian No.2722. On perusal of the sale deed it appears that 4 decimals of land was transferred in favour of the defendant no.2 with specific demarcation and boundaries depicted in red colour along with the sketch map. Admittedly the plaintiff was the *patta* holder in respect of 8 decimals of land situated lying in the East of the land sold by the petitioner.

The learned lower appellate court upheld the order of status quo on the ground that demarcation could not be taken as partition by meets and bounds. Prima facie it appears that there are two other persons whose names have been recorded in respect of the said 23 decimals of land, (suit plot) but they have not been impleaded in the proceeding for partition of the suit plot. The learned lower appellate court and the learned trial judge had both come to the conclusion that the parties are in settled position over their respective portions. The area allotted to the plaintiff and the area purchased by the petitioner have also been demarcated specifically. It is noted that the panchayat has already given permission to the petitioner to construct on the basis of the plan submitted.

Thus, in my opinion, both the learned courts below have failed to consider the prima facie case of the plaintiff.

The suit is for partition and not for declaration and injunction involving a boundary dispute. Moreover, the balance of convenience and inconvenience and irreparable loss and injury ought to have been taken into account. It has been held by both the learned courts below that the parties were in settled possession and were enjoying their respective plots. That the plaintiff has a dwelling house within the area granted to the plaintiff by way of *patta*. The plaintiff has filed the suit for partition. The order impugned would have the effect of restraining the defendant no.2/petitioner from enjoying his purchased portion which has been clearly demarcated in the sale deed.

Under such circumstances, restricting the petitioner from enjoying and utilising his demarcated purchased portion of the suit property will lead to irreparable loss and injury and postponing such use till the disposal of the suit would amount to serious prejudice. The petitioner shall be entitled to construct within the demarcated red portion marked 'A' as depicted in the sketch map annexed to the sale deed. Such construction shall be made only subject to the permission already granted by the Panchayat authorities. The petitioner shall not claim any equity in respect of the construction. The petitioner shall not alienate or create any third party interest in respect of the said construction. If ultimately the suit succeeds and it is found that the construction has been on a portion of the share of the land of the plaintiff, then the petitioner shall be bound to demolish

the portion at his own costs. An undertaking to this effect shall be filed in trial court. The learned court below is directed to dispose of the suit expeditiously, preferably within a period of one year from date of communication of this order. The plaintiff may file appropriate applications if there is any violation of this order before the learned civil court including one for local investigation.

This Court has not gone into the merits of the dispute and the observations made hereinabove are all prima facie in nature.

The order passed by the learned lower appellate court and the learned civil judge are set aside.

The revisional application is disposed of accordingly.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)