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C.O. 1424 of 2020

Ct.8.

Msst. Kasmira Bibi vs. Yakub Ali Mondal & Ors.

Mr. R. N. Mahata
Mr. A.S. Ray

..For the petitioner.

Ms. Shohini Chakraborty
Ms. P.Da

..For the opposite parties.

In this revisional application, the plaintiff no. 2(b)/petitioner has assailed the order no. 214 dated December 6, 2019 passed by the learned Civil Judge (Sr. Division), 3rd Court, Alipore, South 24 Parganas in T.S. No. 20005 of 2014 (Sl. No. 59 of 1992).

The ground, inter alia, taken is that the learned Civil Judge has not acted legally considering the material placed on the application wherein the petitioner sought for repairing of his premises in occupation. The learned judge failed to consider the specific pleading that due to passage of time the suit rooms have become dilapidated which could be proved from the documents.

The order impugned shows that the application for repair was rejected on the ground that there is nothing on record to show that the suit property is in dilapidated condition. Secondly, the learned Judge could not understand from the photographs annexed to the application as to whether that were related to the suit property. Thirdly, there was no specific mention of the Dag No. of the suit property by

which it could be identified. Accordingly, the application was rejected without giving any opportunity of being heard to the defendant.

It is true that the defendant could not appear even on repeated calls and application was taken up for hearing. There was no justification for taking up the application in such a manner. The learned court ought to have given one more chance calling upon the defendant for seeking any objection against the application.

Mr. Mahata, learned advocate appearing for the petitioner has invited my attention to the application for repair which was filed before the learned court below wherein preliminary decree was passed on 30.03.2001 and commissioner was also appointed for effecting final decree in respect of the shares of the parties, particularly, the share of the plaintiff to the extent of 67/176 share which was declared by the learned trial court while adjudicating the suit for partition.

Therefore, admittedly, the petitioner/plaintiff is in possession of a portion of the suit property. So, it can be inferred that the photographs annexed to the petition related to the portion of the plaintiff/petitioner in occupation in the suit property because, the petitioner/plaintiff had averred in paragraph 3 of the application for repair that the defendants are in occupation of two rooms in the northern side of the suit property, one room is east facing made of bricks wall and tile shed with bamboo frames and attached verandah with

tile roof. Another room is also east facing made of darma wall on four sides with tile shed on attached verandah.

It is pointed out that rooms had not been repaired for a long time and due to long user, the said rooms have been damaged and are in dilapidated condition and may fall down at anytime and may cause loss of lives as the petitioner with her family members is living in the said rooms which have become inhabitable since the tiles of the roof are in damaged and broken conditions and rain water frequently pouring inside the rooms during rainy season. The bamboo frames of the tile roof rooms have been damaged and the frames have lost its capacity to protect the tile roofs. The rooms required to be immediately repaired are mentioned in Schedule which are rooms(east facing) in the western side of the suit property made of bricks wall and tile shed supporting bamboo frames and attached open verandah with tile room. Another east facing room made of darma wall on four sides with tile shed supporting bamboo frames and open verandah with tile roof.

An order dated 6.5.2013, passed by learned Civil Judge(Sr. Division), 3rd Court, Alipore reflects that the repair application filed on behalf of the petitioner was allowed on contest on the condition that the petitioner will not be able to claim any equity on the basis of such repair, and by virtue of the said order, the rooms had been repaired. Now, the premises in occupation by the petitioner appears to be in dilapidated condition.

Thus, grounds mentioned in the impugned order rejecting prayer for repairment are not just and sound and liable to be set aside as the petitioner's occupation in the portion of the suit property under partition is well reflected from the schedule mention in the petition supported by an affidavit of the petitioner.

Ms. Chakraborty, learned advocate appearing for the defendants/opposite party submits that the defendants/opposite party have objection to grant of such repair. It is true that in the application for repairing there is no mention of cost to be borne by the petitioner but such prayer for repairment can be allowed at the cost of the petitioner and the petitioner cannot seek any equity.

Be that as it may, upon hearing learned advocates appearing for the parties, the learned trial court is directed to rehear the application for repair within a fortnight from the date of receipt of this order after taking into consideration the objection filed on behalf of the opposite party/defendant and further to conclude the proceeding in respect of final decree of partition of the suit property within a period of two months thereafter.

With the above direction, this revisional application being C.O. 1424 of 2020 is disposed of, however, without any order as to cost.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Shivakant Prasad, J.)

