

AD. 106.
February 10, 2021.
MNS.

W. P. A. 9669 of 2020
(**Via video conference**)

Ebadur Rahaman Mallick
Vs.
State of West Bengal others

Mr. Subhasish Pachhal,
Mr. Rameshwar Sinha

... for the petitioner.

Mr. Ashim Kumar Ganguly,
Mr. Bellal Shaikh

...for the respondent-authorities.

Mr. Dipankar Aditya,
Ms. Tina Biswas

...for the private respondents.

Affidavit-of-service filed in Court today be
taken on record.

The petitioner alleges police inaction in so
far as the police authorities did not act on the
complaint of the petitioner for grant of protection
to construct a boundary wall.

Learned counsel appearing for the
petitioner relies on a transfer deed, executed by
one of the co-owners of the property in favour of
the petitioner, whereby a demarcated portion of
the property was sold to the petitioner.

Learned counsel further places reliance on the decree passed by a civil court in a suit filed by the private respondents for declaration that the deed executed in favour of the petitioner was bad in the eye of law. Such suit was ultimately dismissed, thereby ratifying the validity of the said deed.

Learned counsel, thus, submits that the police ought to have granted appropriate protection to the petitioner for the purpose of constructing the wall on his demarcated land.

Learned counsel appearing for the private respondents submits that a partition suit is pending between the private parties herein. Till such suit is decreed, none of the co-owners have any exclusive right over any portion of the property, but the entire property is owned jointly by all of the co-sharers. It is further submitted that, although the suit of the private respondents challenging the transfer deed of the petitioner was dismissed, such dismissal does not confer exclusive right over a demarcated portion of the property on the petitioner.

Learned counsel for the respondent-authorities files a police report, which is kept on record, indicating, *inter alia*, that a proceeding

under Section 107 of the Code of Criminal Procedure has been initiated on the complaint of the petitioner. It is further indicated that the matter is civil in nature.

A perusal of the materials on record goes on to show that the suit filed by the private respondents was dismissed by civil court. However, the scope of such suit, as evident from the judgment rendered therein, was a challenge to the validity of the deed of sale executed in favour of the petitioner. Such challenge having failed, it cannot now be argued that the petitioner does not have any title over the suit property.

However, even if the transfer deed in favour of the petitioner is valid, the same could not confer on the petitioner any exclusive right over a particular demarcated portion of the joint property merely by virtue of unilateral demarcation of a portion of the property by the petitioner's vendor, who was himself only a co-owner in respect of the joint property.

It appears from the copy of the deed, annexed to the writ petition, that the vendor narrated therein that the said vendor and the other co-sharers had recorded respective specific portions of the suit property in their own names

and the property was partitioned on the basis of demarcation made by a government official (Amin).

However, such stand has not yet been vindicated, in the absence of any decree having been passed in the partition suit and/or any compromise having been arrived at between the parties thereto, recording specific partition of the suit property by metes and bounds. Unless the partition suit reaches culmination in a final decree, it is implicit from the pendency of the suit itself that the property remains a joint property, despite unilateral demarcation by one of the co-owners.

In such view of the matter, unless the partition suit is disposed of finally, the police cannot be directed to protect the petitioner's attempt to raise a wall on a specific portion of the said property.

Hence, W.P.A. No. 9669 of 2020 is disposed of without any order as to costs.

The observations made herein will not prejudice the rights and contentions of any of the parties to the partition suit. The civil court taking up the said suit will be free to decide the same in accordance with law on its own merits.

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.)