

S/L 4
03.02.2022
Court No.19
SD

WPA 624 of 2022
(Via Video Conference)

Rafi Ahamed Mollah
Vs.
The State of West Bengal & Ors.

Md. Salahuddin
Md. Ahaanuzzaman
Md. Raziuddin

...for the Petitioner.

Mr. Raja Saha
Ms. Tanusri Chanda

...for the State.

Mr. Malay Kumar Roy

...for the Respondent-Bank.

Mr. Rafi Ahamed Mollah

...for the Respondent No.9.

The petitioner is a co-sharer with respect to a property situated at Plot No.607, Mouza – Tilora, Police Station – Nalhati, District – Birbhum. The respondent no.9 is the other co-sharer.

The respondent no.9 purchased 16.5 decimals of the said property on the eastern side and the petitioner is the owner of the 20.5 decimals of the said property in the western side.

It is alleged that the petitioner and the respondent no.9 had jointly constructed a hotel over the portion of the land. A partition suit was filed by the petitioner before the learned Civil Judge (Senior Division), 2nd Court, Rampurhat, Birbhum being Civil Suit No.109 of 2016.

Admittedly, the respondent no.9 had taken a loan from the Rampurhat Co-operative Agriculture and Rural

Development Bank Limited by mortgaging his portion of 16.5 decimals of the land. The petitioner added the said Cooperative Bank as a defendant in the suit. The respondent No.9 failed to repay the loan and the account had been declared as a non-performing asset. Proceedings were initiated by the Bank under the provisions of the West Bengal Co-operative Societies Rules, 2011 for recovery of the loan. A notice was published for auction sale of the demarcated property of the respondent No.9 amounting to 16.5 decimals which had been mortgaged to the bank. The sale notice is impugned before this Court by the petitioner. It is submitted that during the pendency of the partition suit the sale should not take place.

The suit was decreed in preliminary form by the learned Civil Judge (Senior Division), 2nd Court, Rampurhat, Birbhum thereby declaring the portions of the parties in the proportion of 20.5 decimals in the share of the petitioner and 16.5 decimals in the share of the respondent no.9. The parties were directed to partition the property amicably by metes and bounds. The petitioner was not aggrieved by the preliminary decree. The petitioner was willing to partition the properties by metes and bounds and had accepted the preliminary decree.

It is alleged that the respondent no.9 refused to partition the properties by metes and bounds. Hence, an application has been filed for appointment of a partition commissioner before the civil court.

The preliminary decree which is annexed, shows that the learned Court was conscious of the fact that the 16.5 decimals belonging to the respondent no.9 had been mortgaged to the bank against a loan taken by the respondent No.9 from the bank.

It has been recorded that the bank was entitled to recover the loan and proceed in respect of the same against the respondent no.9 who was the defendant no.1 in the civil suit, in accordance with law. The bank thereafter proceeded against the respondent no.9 for auction sale of the said property mortgaged by the respondent no.9, for recovery of the loan amount. In the schedule of the sale deed of the respondent no.9 his land has been described with boundaries. The sale notice has been challenged before this Court on the ground that the petitioner who is a person interested in the property was not aware of the sale notice.

Heard the parties. The petitioner was aware of the mortgage as it appears from the plaint. The respondent-bank was added in the suit. The preliminary decree was passed upon hearing all the parties. The preliminary decree specifically permitted the bank to recover the loan in accordance with law and the mortgage of 16.5 decimals in the eastern side of the land has been noted by the Court. The share of the petitioner in respect of the 20.5 decimals has been protected by the Court and the bank specifically submits that the area enjoyed by the petitioner under the 20.5 decimals in the western side has not been affected by

the sale notice. It is further submitted that the sale has been completed and the certificate of sale was issued on January 27, 2022.

Neither the petitioner nor the respondent no.9 took any steps for setting aside the sale notice within the statutory period. This Court sitting in judicial review does not find any illegality on the part of the Cooperative Bank in the procedure adopted by them for recovery of loan, especially because the suit court while granting the preliminary decree for partition by metes and bounds had categorically allowed the bank to recover the loan in accordance with law, thereby taking note of the mortgage.

Under such circumstances, the challenge to the notice has now become infructuous. The petitioner may be at liberty to take appropriate steps, if permitted by law. The respondent No.9 did not take any steps against the recovery proceedings initiated by the co-operative society even now the respondent No.9 has not challenged the proceedings. Neither has the respondent No.9 taken any initiative to approach the authorities under Rule 191(E) or 191(I) for paying up the amount due to the bank including the interest. It is not the case of the petitioner that the petitioner was willing to avail of the remedies under Section 191(E) or Section 191(I). However, the period for availing of such remedy is also over.

The petitioner himself wanted partition of the property in question. The subsequent purchaser for value has

stepped into the shoes of the respondent No.9 and the partition suit may proceed from the stage in which it has been pending before the learned civil judge against the subsequent purchaser and the petitioner is always at liberty to add the said purchaser as a defendant in the suit in terms of order 22 Rule 10 of the Code of Civil Procedure or principles analogous thereto. The deed of sale of the respondent No.9 and also the documents of mortgage clearly specify the demarcated areas enjoyed by the respondent No.9. The respondent No.9 is not aggrieved by the steps taken.

The petitioner himself has accepted the preliminary decree. The petitioner prayed for partition by metes and bounds. Thus the petitioner shall be at liberty to add the auction purchaser as a defendant in the suit and the partition may be effected between the petitioner and the subsequent purchaser of the property, as per the order of the civil court. The interest of the respondent No.9 has devolved upon the auction purchaser. The details of the auction purchaser shall be supplied to the petitioner by the co-operative bank forthwith, in case the petitioner approaches the bank.

Accordingly, the writ petition is disposed of.

There will be no order as to costs.

All parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)