

13.07.2022
Item No. 03
Court No.32
Avijit Mitra

MAT 395 of 2019
with
IA No. CAN 1 of 2019 (Old No.CAN 5838 of 2019)

Krishna Basu & anr.
Versus
Dipali Chakraborty & ors.

Mr. P.K. Bhattacharya
...for the appellants
Mr. Santanu Kr. Mitra
....for the State
Mr. Khairul Alam
....for the respondent no.1

The present appeal has been preferred against an order dated 6th February, 2019 passed in a writ petition being WP No.837 (W) of 2019.

Mr. Bhattacharya, learned advocate appearing for the appellants submits that the writ petition filed by the respondent no.1 ought not to have entertained by the learned Single Judge since the dispute amongst the parties is civil in nature. Such private dispute between the parties could not have been made the subject matter of a proceeding under Article 226 of the Constitution of India.

He argues that the respondent no.1 had suppressed material facts. A judgment dated 31st July, 2017 delivered in a title suit being Title Suit No.203 of

2011 between the appellants and the private respondent no.1 and others, was not brought to the notice of the Court. By the said judgment the counter claim of the respondent no. 1 was refused. Let the said judgment, as produced, be kept on record.

Per contra, Mr. Alam, learned advocate appearing for the respondent no.1 submits that there was a partition suit amongst the heirs of late Utpalakshya Basu and late Nalilakshya Basu being Title Suit No.15 of 2001. The appellants are the heirs of late Utpalakshya Basu. Pursuant to the order passed in the same, the learned Commissioner demarcated the property specifying the respective portions of the co-sharers and thereafter the suit was finally decreed on 11th February, 2005 and the co-sharers took possession of their respective portions with the assistance of police authorities on 29th October, 2006. Subsequent thereto, the respondent no.1 purchased the demarcated portion of the property of the plaintiff no.1 and that of the defendant no.2, inclusive of a passage of 3 feet 6 inches, by a deed dated 15th July, 2011 executed by the legal heirs of the plaintiff no.1 and the defendant no.2. The sketch map annexed to the deed would tally with the sketch map annexed to the learned Commissioner's report. Thereafter, the appellants herein were preventing the respondent no.1 from using the said passage of 3 feet 6 inches. Complaint to that effect was lodged before the police authorities but no steps were

taken and as such, the respondent no.1 was constrained to prefer the writ petition.

Mr. Mitra, learned advocate appearing for the State submits that steps have been taken by the police authorities towards maintenance of peace and tranquility at the locale and that the respondent no. 1 had already removed the padlock on 9th June, 2019 at her costs and in presence of the police authorities. Let the report of the respondent no.4, as produced, be kept on record.

Heard the learned advocates appearing for the respective parties and considered the materials on record including the report of the learned Commissioner and the final decree passed in Title Suit No.15 of 2001 as well as the sketch map, as annexed to the deed by which the respondent no.1 purchased the property. It appears from the judgment delivered in Title Suit No.203 of 2011 that the suit was dismissed and the counter claim of the respondent no. 1 for perpetual injunction was refused due to lack of specific averments. Such observation does not affect the right to the property earned by the respondent no.1 on the basis of the deed dated 15th July, 2011 executed after partition.

The learned Commissioner demarcated the property specifying the respective portions of the co-sharers and the suit was finally decreed on 11th February, 2005. The co-sharers took possession of their respective portions. Thereafter the respondent no.1 purchased the property by

the deed dated 15th July, 2011. The dispute amongst the co-sharers had been finally decided by the competent Civil Court and the police authorities are under an obligation to comply with the judgment delivered by the competent civil forum.

In the said conspectus, the learned Single Judge passed the order dated 6th February, 2019 granting liberty to the respondent no.1 to remove the padlock at the common passage at her own costs with an observation that the police authorities shall ensure that there is no breach of peace at the locale.

We do not find any infirmity in the order impugned warranting interference in the present appeal.

The appeal and the connected application are, accordingly, dismissed.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)