

S/L 25
18.11.2022
Court. No. 12
Sourav

CO 771 of 2021

**Hasina Mamtaj Begum & Anr.
Vs.
Rumiunnessa Bibi & Ors.**

*Mr. G. S. Kaderi
Mr. Subendu Banerjee*

...for the petitioners.

*Mr. Anirban Pramanick
Ms. Subhasree Dey
Mr. Punarbasu Nath*

...for the opposite party no. 8.

Mr. G. S, Kaderi, learned advocate for the petitioners and Mr. Anirban Pramanick, learned advocate for the opposite party no. 8 are present. Heard learned advocates for the parties at length. The present case is now taken up for passing appropriate order.

The instant revisional application arises out of an order No. 22 dated 01.03.2021 as passed by the learned Civil Judge (Junior Division), Kandi, Murshidabad in Partition suit no. 106 of 2019 whereby and whereunder the said Court by the impugned order allowed the added defendant no. 8's application under Section 151 of the Code of Civil Procedure and permitted him to raise construction of his residential building over a portion of the suit property with certain conditions. The plaintiff felt aggrieved and preferred the instant revisional application.

In support of the instant revisional application, the learned advocate for the revisionist draws attention of this Court to the certified copy of the impugned order and the photocopy of the petition as filed by the defendant no. 8/opposite party no. 8 before the learned trial Court. It is

contended that since the defendant no. 8/opposite party no. 8 is constructing her dwelling house flouting the Panchayat Rules, the impugned order may be set aside.

In course of hearing, learned advocate for the opposite party no. 8 handed over a photocopy of the permission for construction as issued by Pradhan of Bharatpur Gram Panchayat. Attention of this Court is also drawn to the certified copy of the impugned order. It is contended that while passing the impugned order, learned trial Court has imposed two conditions, i.e., the present opposite party no. 8 shall not claim any equity over the proposed construction and that the present opposite party no. 8 shall have to demolish the structure if the portion does not fall within her area. It is argued that the impugned order may not be touched since the Trial Court had done equity with both the parties of the said suit. It is argued further that no case has been made out by the present petitioners for interfering the impugned order.

Heard learned advocate for the parties at length. Perused the certified copy of the impugned order and the other materials as placed before this Court.

Admittedly, learned trial Court in a suit for partition allowed the defendant no. 8/opposite party no. 8 herein to raise a construction of her residential house over the suit property but at the same time, the said Court has put certain restrictions which has been mentioned above. In considered view of this Court, the restriction as imposed upon opposite party no. 8 in the partition suit no. 106 of 2019 is sufficient

to protect the suit property as well as to protect the interest of the plaintiff.

In view of such, this Court finds no much infirmity in the impugned order. As a result, the present revisional application fails and the same is dismissed. The impugned order dated 16.12.2020 as passed in Partition Suit no. 106 of 2019 by the learned Civil Judge (Junior Division), Kandi, Murshidabad, is hereby affirmed. It is further ordered that the learned Civil Judge (Junior Division), Kandi, Murshidabad, shall obtain a periodical report at least in a month from the Pradhan of Bharatpur Gram Panchayat to ascertain as to whether any illegal construction is going on over the suit property at the instance of the defendant no. 8/opposite party no. 8 or not and in the event any adverse report is obtained by him, he is at liberty to pass any order in accordance with law in the said suit.

Let copies of this order be forwarded to the learned trial Court as well as to Pradhan, Bharatpur Gram Panchayat, Murshidabad through District Magistrate, Murshidabad at the earliest.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)