

June 9, 2022
Serial No.13
Court No.1
SG

FMA 1037 of 2021
with
CAN 1 of 2021

Partha Sarkar and another
vs.
Tripti Sarkar and others

Mr. Bhaskar Prosad Banerjee,
Mr. Aniket Mitra,
Mr. Parashar Baidya, Advocates

... for the appellants

Mr. Jishnu Chowdhury,
Ms. Amrita Panja Moulick, Advocates

... for the State

By this appeal private respondent Nos.4 and 5 in the writ petition have challenged the order of learned Single Judge dated 03.08.2021 whereby learned Single Judge has disposed of WPA 11280 of 2021 by directing division of the residential house between respondent No.1(writ petitioner) and the appellants and has further directed appellants to pay a sum of ₹10,000/- monthly to respondent No.1.

Respondent No.1 had filed the writ petition with the plea that the appellants are her sons and her husband had died in the year 2018 and her sons had not treat her properly, therefore she had made certain complaints to the police. A prayer was made in the petition to initiate criminal proceedings against the appellants on the basis of the complaints and further to direct respondents to take initiative so that respondent No.1 could live in her room.

Learned Single Judge, without calling for exchange of affidavits, by the order dated 27.07.2021 had directed the officer-in-charge of the concerned police station to conduct an inquiry and submit the report. The said officer-in-charge had submitted the report stating that respondent No.1 and the appellants were living in peace. While passing the impugned order learned Single Judge disbelieved the said report and he had held that respondent No.1 is entitled to live in peace and the residential house which is comprising of ground floor and first floor will be divided and the daughter of respondent No.1 will be permitted to stay with respondent No.1 in the ground floor at a place to be decided and appellants' son and their families could occupy the first floor and they will have no access to the ground floor except for ingress and egress of the first floor.

Learned Single Judge further expressed that the daughter of respondent No.1 will take care of her. He additionally also directed that the appellants will pay a sum of Rs.10,000/- to respondent No.1, by mentioning that the said appellants had voluntarily offered to pay the said amount.

Learned counsel for appellants has submitted that the civil suit between the parties is already pending in which there is an order of injunction and there is also an order passed under Section 144 of the Cr.P.C. protecting possession and that the residential house in question is old, therefore it cannot be divided in two parts without

taking into account the availability of the toilets and the kitchen and that one of the sons of appellant No.1 is deaf and dumb. Thus, the above partition of the house has created problem and even otherwise the order impugned could not have been passed in the writ jurisdiction.

Learned counsel for the State has also supported submission of appellants and has submitted that the official respondents have acted in terms of the order of learned Single Judge.

In spite of service of notice, no one has appeared for respondent No.1. It is also noted that the matter had appeared yesterday but no one had appeared for respondent No.1, therefore it was passed over for today.

Having heard learned counsel for parties and on perusal of the record, it is noticed that T.S. No.220 of 2020(*Tripti Sarkar and others vs Partha Sarkar and others*) between the parties is pending before the court of Civil Judge, Sr. Division, 6th Court, Alipore, South 24 Parganas in which the order of temporary injunction has been passed on 27.02.2020 by directing the parties to maintain status quo in respect of the nature and character of the said property as well as possession has been enjoyed by respective parties on the date of the order.

The record further reveals that an application was filed by respondent No.1 and her daughter to draw proceedings under Section 144(2) of the Cr.P.C. in which the Executive Magistrate had issued the direction to see

that the lawful and peaceful possession of respondent No.1 on the property in question is not disturbed. The said order had adequately extended the protection to respondent No.1.

The impugned order passed by learned Single Judge runs counter to the order of injunction passed by the competent civil court. That apart, learned Single Judge while passing the impugned order has entered into the civil dispute and has directed division of the residential property without taking note of the relevant facts and circumstances of the case, rights of the parties and the amenities available in the property. Even otherwise such an order could not have been passed in the exercise of the writ jurisdiction. Similarly it has been pointed out by learned counsel for appellants that they are paying a sum of ₹8,000/- per month to respondent No.1 therefore without taking into account the financial condition of the appellants a direction to pay ₹10,000/- per month has been given though the same was not voluntarily offered.

Considering the above and also the circumstances of the case, we are of the opinion that order of learned Single Judge cannot be sustained which is accordingly set aside.

The appeal is allowed.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]