

16.08.2022
Item No.12
Ct. No.7
CHC
(disposed of)

C.O.1748 of 2022

**Abdul Latif Sarkar
Vs.
Joynal Abedin & anr.**

Mr. Golam Mastafa,
Mr. Subir Sabud,
Mr. Samirul Sardar
...for the petitioner

The subject-matter of challenge in this revisional application is against an order dated 17th May, 2022, passed by learned Civil Judge (Senior Division), 1st Court, Berhampur, in Partition Suit No.17 of 2003, rejecting petition under Section 151 and 152 of the C.P.C.

Mr. Mastafa, learned advocate appearing for the petitioner submits that petitioner is party to the pending Partition Suit. The Partition Suit has already ended in a preliminary decree. After the preliminary decree, there has been an order appointing learned Partition Commissioner to effect partition decree between the co-sharers.

It is submitted by the learned advocate for the petitioner that there is a saw mill situated in the suit property, jointly under possession of petitioner/defendant no.1, and the plaintiff.

It is further submitted that the petitioner is interested to protect his possession with respect to the saw mill situated in the suit property.

Upon perusal of the impugned order, it appears that 'Ga' schedule property was sought to be included within the hotchpot of Partition Suit, and that 'Ga' schedule property could not be brought within the hotchpot of partition by the court below, giving reasons therefor. The parties in the Partition Suit have already accepted that order, recorded long before. It was not challenged before any higher authority. The court below by the impugned order has rightly observed that the purpose of bringing 'Ga' schedule property to the hotchpot of schedule is against the order earlier recorded in this case rejecting the 'Ga' schedule property to be included within the hotchpot of partition. The purpose of Section 151/152 C.P.C. is thus not to rectify the clerical or arithmetical mistakes in the judgement already rendered in this case by the court below.

As per submission disclosed by the learned advocate for the petitioner that the commission work to effect the preliminary decree is in progress. When the commission work is in progress, the alleged existing joint possession of the petitioner with respect to the saw mill, if there be any, may be brought to the notice of the learned Partition Commissioner provided the

same is within the hotchpot of partition, as already disclosed in the schedule of plaint, while effecting preliminary decree. The objection, if there be any, may also be raised before the Pleader Commissioner, and such objection is believed to be taken case of by the Pleader Commissioner in accordance with the law.

The revisional application is thus disposed of with the above order and observation.

Petitioner is directed to make communication of this order to the learned court below as well as to the opposite parties and their learned advocate in the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)