

09.02.2022
Ct. 21
D/L 24
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C.O. 1610 of 2021
(Via Video Conference)

Bipasha Raha & Anr.

-Vs-

Smt. Purnima Das Chowdhury & Anr.

Mr. Gopal Chandra Ghosh,
Mr. Sib Sankar Bandopadhyay,

... for the petitioners

Ms. Sudeshna Basu Thakur,

... for the opposite parties

The present application under Article 227 of the Constitution of India is at the instance of the plaintiff's/petitioner's directed against the order dated 22.03.2021 passed by Civil Judge (Senior Division) 9th Court, Alipore, in Misc. Case No. 9 of 1999, whereby the valuation report submitted by valuer commissioner Banibrata Mukherjee was rejected and order for appointment of an Engineer Valuer Commissioner to hold fresh commission for assessment of valuation of the disputed property was passed.

The facts giving rise to the present revisional application in gist are that premises no. 162/19

Lake Garden, renumbered as 113 Lake Garden was originally owned by two brothers namely Dilip Dutta and Pradip Dutta each having 50 % undivided share. Pradip Dutta during his life time transferred his undivided 50 % share in the suit property in favour of Mihir Kumar Das, the predecessor in interest of the present opposite parties on 29.07.1994.

The legal heirs of Dilip Dutta for partition of their undivided 50 % share in the disputed property admitting that the remaining 50 % share of Pradip Dutta is in possession of Mihir Kumar Das have filed Title Suit no. 33 of 1997. Such Partition Suit was decreed in preliminary form on 16.03.1998. Being aggrieved an Appeal was preferred by Mihir Kumar Das being F.A. No. 107 of 1999 alleging the property was already partitioned between the two brothers by way of mutual settlement or by metes and bounds. The Appeal was dismissed affirming preliminary decree by the Hon'ble Division Bench of this Court and with the findings that plaintiffs and defendant no. 3/ Appellant had undivided moiety share in the suit property and the same was unpartitioned although some specific

portion were in possession of the parties by mutual arrangement on 20.06.2006.

After the dismissal of the appeal the legal heirs of Dilip Dutta filed an application under Section 4 of the Partition Act, for pre-emption of 50 % share of Mihir Kumar Das a stranger in the family dwelling property on 16.03.1999. Such application has been registered as Misc. Case No. 9 of 1999. The learned Court below allowed the application under Section 4 of the Partition Act holding legal heirs of Dilip Dutta are entitled to preempt the share of Mihir Kumar Das the predecessor in interest of the present opposite parties upon payment of market value as stood on 4th March 1999 towards the 50% undivided share of the defendant no.3 (since deceased) in the suit property.

In order to determine the market value of the 50% share of Mihir Kumar Das, a commissioner was appointed in the year 2007, but who had failed to submit the report till 2015 and as such the commissioner was discharged and Sri Banibrata Majumder, a Chartered Engineer as well a lawyer was appointed as Engineer valuation

commissioner to assess the market value of 50% share of Mihir Kumar Das on 16.02.2017.

The learned Commissioner submitted his report on 14.11.2017, but the court below refused to accept as during cross examination the commissioner admitted that he did valuation work as per instruction of the plaintiffs. Further, the Court below refused to take into consideration the annexure 1 to 7 alleged to have been obtained from the office of A.D.S.R. Alipore, for want of stamp, seal and signature of the of A.D.S.R. on the same. Therefore, the learned Court below decided to appoint a fresh engineer valuation commissioner to assess the valuation of the 50% of the opposite parties in the disputed property as it stood on 04.03.1999.

Perused the report of the commissioner and his evidence lying in the record. From photographs of the alleged disputed building it is seen the property in question to be a three storied building situated at Lake Garden in South Kolkata.

The commissioner has assessed the valuation of the three storied building standing on 3 Cottahs land in a place like Lake Garden to be only Rs. 26,06,826/- in the year 1999. It is a matter of fact

that Lake Garden Area is surrounded by Shyama Prasad Mukherjee Road, Rabindra Sarovar and Prince Anwar Shah Road and near to famous South City Mall. The area is well connected by metro rail and as well by normal train lines. Therefore, the valuation given by the commissioner in respect of the three storied structure standing on 3 Cottahs of land in a place like Lake Garden to be only Rs.26,06,826/-appears to be grossly undervalued.

That apart from the annexeture 1 to 7 the e-valuation reports supplied by the Directorate of Registration and Stamp Revenue shows the market value of the property/Apartment situated in Lake Garden to be above Rupees one corer and which the court below has failed to accept for want of seal, signature and stamp of the concerned authority on the same.

Having regard to such facts this Court does not find any illegality and infirmity in the impugned order passed by the learned Court below.

However, this court is of view the learned Court below instead of appointing a fresh engineer valuation commissioner ought to have called for valuation report of the disputed property directly from the office of A.D.S.R. Alipore or from

Directorate of Registration and Stamp Revenue as it was in the year 1999, keeping in view the facts the petitioners have filed the partition suit long ago in the year 1997 and had obtained order of preemption of the shares of the opposite parties in Misc. Case no.9 of 1999 under section 4 of the Partition Act on 16.05.2007 and still the case is pending only for valuation report.

In order to avoid delay and to render justice to concerned party without further delay, the learned court below is requested to call for valuation report of disputed property as it was in the year 1999 from the office of A.D.S.R., Alipore. More so, now Government of West Bengal has fixed different circle value of different types of properties situated in different parts of Bengal for the purpose of registration charges and stamp duty. Whatever may be the actual consideration agreed between the parties circle value is taken into consideration for the purpose of registration charges and stamp duty. The learned court below may take circle value of the suit property as it was in the year 1999 as a yard stick for assessment of the market value along with other factors such as the age of the building and its location with local amenities and if not

possible then by calling volume books of other sale deeds of the area which were executed in the year 1999 or in 1998 or in 2000 for calculation of the average value of the disputed property.

Accordingly, **C.O. 1610 of 2021** is disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

In view of the order made above affidavits are not invited. Allegations made shall be deemed to be denied.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for be given to the parties upon compliance of the requisite formalities.

(**Kesang Doma Bhutia, J.**)