

April 18, 2022
ARDR
(347)

WPA 33335 of 2014

Ava Dutta
Vs.
The State of West Bengal & Ors.

Mr. Amlan Jyoti Sengupta,
...for the petitioner.
Mr. Chandi Charan De,
Ms. Reshmi Rahaman,
...for the State.

Affidavit of service filed by the petitioner is taken on record.

The State respondents do not intend to use any affidavit in opposition in this matter.

The order passed by the Sub-Divisional Officer (Sadar) South 24 Parganas on 23rd October, 2000 is under challenge in this writ petition.

It is submitted on behalf of the petitioner that the plot in question originally belonged to one Santaprobha Dutta, since deceased, mother in law of the petitioner. After marriage of the petitioner with Tapas Dutta, son of the original owner, the petitioner and Tapas Dutta raised construction in the said plot and were residing therein. The original owner expired on 8th September, 1989.

Learned counsel for the petitioner takes this Court to an order passed on August 13, 1987 by a coordinate Bench of this court in Suit No. 326 of 1980, wherein it was indicated that the property in question would be conveyed by Tapas Dutta to the petitioner on condition

that she would have absolute right during her lifetime and could induct tenants therein and enjoy rents and profits therefrom. After her death the property would revert back to the children of the 2nd marriage of Tapas Dutta. Though the order starts with the line “by consent the suit is disposed of by the following decree and order”, the suit was adjourned to a subsequent date which suggests that the suit was not actually disposed of by the order dated August 13, 1987, meaning thereby that no decree for mutual divorce was granted to the parties on that date by the said order.

In the order impugned, the Sub-Divisional Officer has quoted the relevant part of the order conferring life interest in favour of the petitioner and has held that as no absolute right and title was given to the petitioner, her name could not be recorded in the record of rights qua the said property.

Learned counsel appearing on behalf of the State respondents, in his usual fairness, submits that the Sub-Divisional Officer has no authority to make an observation pertaining to the right, title and interest of the petitioner in respect of the property.

The order dated August 13, 1987 is not a final order and there is nothing on record to suggest that there was a decree for mutual divorce in terms of the said order between the petitioner and her husband, since deceased.

In view of the above, the Sub-Divisional Officer be directed to reconsider the prayer of the petitioner and pass a reasoned order on merits after giving reasonable opportunity of hearing to the petitioner, in accordance with law.

The order impugned dated 23rd October, 2000 passed by the Sub-Divisional Officer (Sadar) South 24 Parganas is set aside/quashed.

The Sub-Divisional Officer, being the respondent no.3, is directed to reconsider the prayer of the petitioner in accordance with law and decide the matter on merits by a speaking order within a period of two months from the date of communication of this order after giving reasonable opportunity of hearing to the petitioner. The decision taken by the 3rd respondent be communicated to the petitioner within a week thereof.

With such directions, WPA 33335 of 2014 is disposed of. There shall however, be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)