

IN THE HIGH COURT AT CALCUTTA**(Civil Revisional Jurisdiction)****Appellate Side**

Present:

The Hon'ble Justice Bibhas Ranjan De**C.O. 288 of 2023****Lakhi Chand Yadav & Ors.****Vs.****Dayaram Gowala & Ors.**

For the Petitioner : Mr. Ganesh Shrivastava, Adv.

Mr. Sukanta Das, Adv.

For the Opposite parties : Ms. Anyasha Das, Adv.

Heard on : March 28, 2023

Judgment on : April 17, 2023

Bibhas Ranjan De, J.

1. The order dated 19.12.2021 in connection with Misc Case No. 48/18 is under challenged. Both the learned advocate Mr. Ganesh Shrivastava and Ms. Anyasha Das appeared on behalf of the parties to this application.

2. Specific case of the petitioner is as follows:-

petitioners/plaintiffs filed a title suit no.22 of 2000 before the Learned Civil Judge, Senior Division/Small Causes Court at Sealdah with a prayer for declaration and partition of the Premises no. 1/1, Kundu Lane, Kolkata 700037 against the opposite parties/defendants. Preliminary decree was passed in the suit declaring 2/3rd share in favour of the petitioners/plaintiffs and 1/3rd in favour of the opposite parties/defendants. Thereafter, Partition Commissioner was appointed for effecting partition by metes and bounds. But when commissioner visited the premises he was restrained by the op/defendants and denied entry into the suit premises. Partition Commissioner filed application for police assistance and at the time of hearing opposite parties/defendants undertook not to restrain Commissioner. Again Commissioner visited the suit property for effecting partition metes and bounds and submitted his final report along with the plan before the Learned Trial Court. Accordingly, final decree was passed on 05.09.2016 and petitioners/ plaintiffs filed an application for execution of the final decree with the police help, if required. Learned Judge issued a writ to the bailiff for

delivering possession of the suit property with the help of survey passed Advocate Commissioner. On 06.07.2018 bailiff visited the suit property but bailiff was obstructed by the opposite parties/judgments debtors. The bailiff returned the writ for delivery possession unexecuted apprehending serious breach of peace and sought for assistance of police.

- 3.** Further case of the, petitioners/deGREE holders is that an application under Rule 208 of civil rules and orders was filed against the opposite parties/judgement debtors in Title Execution Case No. 3 of 2017 and said application was registered as Misc Case No. 48 of 2018. Opposite parties/judgement debtors contested the said misc case by filing written objection contending, inter alia, that bailiff did not visit the suit premises on 06.07.2018 and also denied any resistance. In course of hearing bailiff and learned advocate Commissioner testified that without police assistance writ of delivery of possession could not be executed. On the other hand opposite party no. 1 and 2 deposed on behalf of the judgment debtors that bailiff did not visit the suit property on 06.07.2018.

4. After hearing both sides and considering evidence Learned

Executing Court returned his findings as follows:-

“ Having regard to the submission from both sides and evidence on record and the final decree and sketch map, I do not find any other way of entrance into the suit premises except the narrow common passage which ends in blocking of concrete wall. It is also reflected from the final report of Ld. Advocate Commissioner. It has been seen from the said final report that the said entrance was blocked by the defendant. Now the question which comes before this court is whether in Misc. Case of police help, can court pass the sue moto order for destruction or removing of the said concrete blockage. In my opinion, the prayer for police help filed by the DHR/petitioner is premature even if police order is passed, police cannot enter into the suit premises and can not break the said boundary wall. So far, no such prayer made by the DHR in this case. There is also ambiguity in the report

of the bailiff and other witnesses. In this situation, allowing police help will serve no purpose unless there is order for destruction of the said entrance gate in the main execution suit. So far no such prayer made by petitioner is considered and rejected being premature. The Misc. Case 48 of 2018 is thus disposed of. Both parties are directed to take steps in the original execution suit. To 17/12/22 for appearance before the execution suit. Parties to take proper steps.”

- 5.** Learned Advocate, Mr. Ganesh Shrivastava, has contended that opposite parties/defendants never raised any such plea of wall in the written objection against the petition for police help. Mr. Shrivastava relied on bailiff's report and site plan prepared by the Commissioner where common passage is shown. Parting with his argument Mr. Shrivastava contended that Commissioner's report was never challenged by the judgment debtors and final decree was passed without any objection.

6. In opposition to that, learned advocate, Ms. Anyasha Das, referred to the Commissioner's report and submitted that Commissioner entered into the premises through a cover passage and referring to bailiff's report it is submitted that bailiff never visited the suit property and report of bailiff is confusive.

7. From the entire material on record particularly the Commissioners report, it comes to my view that at the time of Commission work Learned advocate for the plaintiff submitted that the entry into the suit premises and premises no. 2C/1 is the same and the passage mentioned above to the suit premises blocked by the defendants. On being asked by the Commissioner defendants/judgements debtors and their learned advocate disclosed that there is only a side vacant space now covered by a room and as such there was no entry for the suit premises as the premises no. 2C/1 is owned by the defendants and accordingly defendants resisted the commissioner to go into the suit premises through their newly constructed room and informed the Commissioner that the passage of the suit property is in the northwestern side which was blocked by the owner premises no. 1/A, Kundu Lane, who

resisted the learned Commissioner to enter into the suit premises through that particular passage of premises no. 1/A(Page 2 of the Commissioners report).

8. Considering that situation learned Commissioner opined that it was not possible to proceed with the Commissioner's work without police assistance as the plan submitted to the Commissioner showed that the passage to the suit premises is the above North Western passage belonging to premises 1/1 & 1/B, Kundu Lane (page 3 of the Commissioners report).

9. Learned Commissioner further reported that he had drawn a rough sketch map of the suit premises and measured a **passage** in the west side leading to the suit property blocked by Sri Baisak Kundu and Sri Anil Das Chowdhury being the owners of the neighbouring premises (at the bottom of page no. 3 & top of page no. 4 of the commissioners report).

10. Thereafter, learned Commissioner ultimately entered into the suit premises through a cover space in the Eastern side of the suit premises and at that time learned advocate on behalf of the defendants drew the attention of the Commissioner regarding ovens, utensils, water jar, ceiling fan, two cots with

bedding etc. and one portion used as kitchen and other as bed room, which is a space belonged to premises no. 2C/1.

11. After careful scrutiny of the Commissioners report, I find hardly any scope to hold that there is passage for entering into the suit premises. From the Commission's report, it is found that learned Commissioner entered into the suit premises through a covered space (used as a room). Therefore, I am unable to disagree with learned Judge on the issue of blocked entrance. Thereby, learned Judge could not allow police help with a suo moto direction for removal of the blockage with the assistance of police. Accordingly, learned Judge gave the liberty to the parties to the misc. case to take proper steps.

12. In the aforesaid view of the matter, I find no reason to interfere with the order impugned passed on 19.11.2022 in connection with Misc. Case No. 48 of 2018 invoking the Provision of Article 227 of the Constitution of India.

13. Accordingly, the revision application no. CO 288 of 2023 stands dismissed without any order as to cost, with a liberty to the petitioners/deed holders to take steps before the Executing Court for removal of obstruction on the passage of suit property, in terms of Commissioners final report.

14. Thus, let a copy of this order be communicated to the Learned Civil Judge, Senior Division/Small Causes Court For information.
15. Pending application, if any, stand disposed of as well.
16. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
17. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]