

S/L 46
16.01.2023
Court. No. 12
Suwayan

CO 259 of 2019

Sushanta Kumar Ghosh
Vs.
Sanghamitra Deb Roy & Ors.

Ms. Shila Sarkar
Mr. Sibasis Ghosh

...for the petitioner.

Mr. Gour Baran Sau

...for the opposite party nos. 1 to 4.

In the instant revisional application as filed under Article 227 of the Constitution of India, the Order No. 48 dated 06.12.2018 as passed in Partition Suit No. 181 of 2009 by the learned Civil Judge (Sr. Division) at Malda is impugned.

Before the learned Trial Court in a suit for partition the plaintiff has filed an application under Order XVI Rule 6 read with Section 151 of the Code of Civil Procedure with a prayer for a direction upon the Superintendent of Post Office Malda Division, Malda to supply information regarding current position of the accounts as mentioned in the schedule of the said application which stood in the name of the father of the parties to the said suit, i.e., in the name of Late Sirish Kr. Ghosh. The said application was opposed by filing written objection by the defendant Nos. 1 to 4 who are the opposite parties before this Court. By the impugned order learned Trial Court after hearing both the sides dismissed the said application.

Plaintiff felt aggrieved and, thus, preferred the instant revisional application.

In support of the instant revisional application, Ms. Sarkar, learned Advocate for the plaintiff/petitioner submits before this court that it is the established principle that in a partition suit, all joint properties are to be brought in the common hotchpot. It is, thus, argued that since the plaintiff is duty bound to bring all the properties as left out by his father and since the particulars of the accounts as mentioned in the schedule of the said application are not within his knowledge, learned Trial Court ought to have passed a direction upon the Superintendent of Post Office, Malda Division, Malda to provide the information as sought for under cover of the petition as filed under Order XVI Rule 6 of the Code of Civil Procedure before the learned Trial Court.

Learned Advocate for defendant Nos. 1 to 4/opposite parties, however, opposes such contention. It is argued that since the present petitioner/plaintiff has not preferred any appeal against the refusal by the postal authority to provide such information as sought for under provisions of RTI Act, learned Trial Court is very much justified in passing the impugned order.

This Court has meticulously gone through the entire materials as placed before this Court including the impugned order.

This Court has also given its anxious considerations over the submissions of the learned Advocates of both sides.

On perusal of the entire materials as placed before this Court and also on perusal of the provisions Order XVI Rule 6 of the Code of Civil Procedure, this Court is of considered view that since it is a settled principle of law that in a partition suit all the joint properties are to be brought to the common hotchpot, the plaintiff made no mistake in invoking the provisions of Order XVI Rule 6 of Code of Civil Procedure under cover of his said application as filed before the learned Trial Court.

Accordingly, the instant revisional application is allowed and the impugned Order No. 48 dated 06.12.2018 as passed in Partition Suit No. 181 of 2009 by the learned Civil Judge (Sr. Division) at Malda is hereby set aside. Consequently the petition under Order XVI Rule 6 of Code of Civil Procedure dated 22.07.2013 as filed by the plaintiff/petitioner stands hereby allowed on contest. Learned Trial Court is hereby directed to call for a report from the Superintendent of Post Office, Malda Division, Malda with regard to the current position of the accounts as mentioned in the schedule of the said application along with the statements of the said accounts positively within two weeks from the date of communication of this order.

It is made clear that in the event the postal authority does not furnishes the information as will be called for by the learned Trial Court, learned Trial Court is hereby given liberty to take appropriate coercive measure(s) as against the Superintendent of Post Office, Malda Division, Malda in accordance with law.

With the aforementioned observation the instant revisional application being CO 259 of 2019 is disposed of.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)