

S/L 28
12.04.2023
Court. No. 12
Sourav

CO 1162 of 2022

**Akbar Sardar @ Akbar Ali Sardar
Vs.
Siyarab Sardar & Ors.**

Mr. Sandip Das

...for the petitioner.

Learned advocate for the petitioner is present and he has filed an affidavit-of-service. Let the affidavit-of-service as filed today be taken on record.

None appears on behalf of the opposite parties in spite of service.

Perused the impugned order.

Heard learned advocate for the petitioner at length.

The present case is now taken up for passing appropriate order.

In this revisional application as filed under Article 227 of the Constitution of India, the Order No. 28 dated 28.03.2022 as passed by the learned Civil Judge (Senior Division), Diamond Harbour, District – South 24 Parganas in Title Suit No. 423 of 2019 has been assailed at the instance of the defendant no. 1 of the said suit.

By the impugned order, learned trial court in a suit for partition rejected the prayer of the defendant no. 1 to make construction basically on the ground that no measurement of the proposed construction has been provided.

It is submitted on behalf of the revisionist/defendant no. 1 that in the event, the impugned order is not modified, the present defendant no. 1 cannot construct his house, which has become dilapidated and in that event the

government grant as has been allotted in favour of the defendant no. 1 would be returned as unutilized.

On perusal of the impugned order and after hearing the learned advocate for the revisionist/defendant no. 1, it appears to this Court that the learned trial court is perfectly justified in rejecting the prayer of the defendant no. 1 since the defendant no. 1 in his petition for permission to raise construction has not given any measurement of his proposed construction.

In view of such, the instant revisional application fails. The impugned Order No. 28 dated 28.03.2022 as passed by the learned Civil Judge (Senior Division), Diamond Harbour, District – South 24 Parganas in Title Suit No. 423 of 2019 is hereby affirmed.

Liberty is, however, given to the present revisionist/defendant no. 1 to file similar such application for making construction with appropriate measurement and other supporting documents before the learned trial court in Title Suit No. 423 of 2019 and in the event, if such application is filed, learned trial court is at liberty to dispose of the said proposed application without being influenced either by the instant order of this Court or by Order No. 28 dated 23.03.2022 as passed in Title Suit No. 423 of 2019.

With the aforementioned observation, the instant revisional application being **CO 1162 of 2022** is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

All parties to act on the server copy of this order duly downloaded from the official website of this Court.

(Partha Sarathi Sen, J.)