

Item No.5
20.12.2023
Court. No. 19
GB

C.O.1340 of 2023

Sri Rajkumar Maity
VS
Sri Debasis Das & Ors.

Mr. Sabyasachi Bhattacharya

...for the Petitioner.

The revisional application arises out of an order dated July 30, 2022, passed by the learned Additional District Judge, Fast Track 2nd Court, Contai in Misc. Appeal No.6 of 2017. The misc. appeal arose out of an order dated April 6, 2017, passed by the learned Civil Judge (Senior Division), 1st Court at Contai in Title Suit No.187 of 2016.

By the order dated April 6, 2017, the learned trial judge rejected an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure on contest. The court was of the view that the prayer for injunction against the defendant nos.8 and 9 in the suit, could not be permitted as the property in question had already been demarcated by a partition commissioner and the defendant nos.8 and 9 had obtained possession of their demarcated portion, by execution of a final decree passed in an earlier partition suit.

Such order was challenged by the plaintiff before the learned Additional District Judge, Fast Track 2nd Court, Contai. By the judgment dated July 30, 2022, the learned lower appellate court also rejected the misc. appeal thereby upholding the order passed by the learned Civil Judge (Senior Division), 1st Court at Contai in Title Suit No.187 of

2016. The learned lower appellate court was of the opinion that the documents which were before the learned trial judge would indicate that the defendant nos.8 and 9 had obtained their suit property on the basis of a partition, through a competent court of law. Specific allotted portions were demarcated in the final decree. The final decree was put into execution. The decree was discharged, satisfied and executed. Such final decree for partition by metes and bounds was passed against the vendor of the plaintiff, also. Thus, the plaintiff was bound by such decree and could not claim any partition against the defendant nos.8 and 9 once again, when they were no longer co-sharers pursuant to the final decree that was passed in an earlier suit.

Even if the plaintiff purchased a portion of the suit plot and there were other unallotted portions, in my view, injunction against the defendant nos.8 and 9 could not be allowed.

Under such circumstances, this Court does not find any reason to interfere with the order impugned. The learned court is requested to dispose of the suit expeditiously, preferably within a period of one year from the date of communication of this order.

Accordingly, the revisional application is disposed of.

However, there shall be no order as to costs.

Parties are directed to act on the basis of server copy of this order.

(Shampa Sarkar, J.)