

7.6.2023
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Ct. no. 652
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C.O. 1980 of 2019

Sri Ramaprasad De
Vs.
Sri Sambhu Das

Mr. Susenjit Banik
Mr. Nilratan Banerjee
Mr. Aniruddha Mitra
Mr. Mrinal Sahafor the petitioner

Mr. Anshuman Chakraborty ...for the O.P no. 1

Mr. Prasanta Bishal ..for the O.P nos. 2(a) to 2(c),
3(a) to 3(c) and 4

Being aggrieved by order no. 50 dated March 15, 2019 passed by the learned Civil Judge (Senior Division), Additional court at Chinsurah, Hooghly in Title Suit no. 67 of 2016, present application under Article 227 of the Constitution of India has been preferred. By the impugned order, the learned court below was pleased to direct both the plaintiff and defendant nos. 1, 3 and 4 to file commission report which has been made by two private surveyors.

It has been contended by the petitioner that the plaintiff no. 1/opposite party herein filed aforesaid suit against the present petitioner and the opposite party nos. 2,3 and 4 inter alia for a decree of partition in both preliminary and in final form by declaring their proportionate share in respect of the suit property. The

petitioner herein initially appeared as defendant no. 2 in the said suit by filing written statement and in the written statement, he made a specific averment that plaintiff no. 1 in collusion with the defendant nos. 1 and 4 and trying to grab excess share in the suit property. Accordingly, the petitioner herein filed an application in the said suit seeking transposition of the petitioner from the category of defendant to the category of plaintiff and accordingly he was transposed as plaintiff no. 2. The court below by his judgment and decree dated 20th February, 2017, was pleased to pass decree in the said Title Suit no. 67 of 2016 in preliminary form and thereby declaring the share of the parties in the said suit. In the judgment, the court below was further pleased to direct to make amicable partition of the suit schedule property by metes and bound within three months from the date of passing the decree and further opportunity was given to the parties for appointment of partition commissioner in case parties fail to effect partition by metes and bounds in terms of share. The opposite party no. 1 being the plaintiff no. 1 in the said suit, the present petitioner and the opposite party nos. 2,3 and 4 jointly thereafter filed applications under Order XXVI Rule 13 of the Code of Civil Procedure for appointment of partition commissioner, in order to demarcate the respective portion of share of the parties in the suit property. The petitioner alleged that the

learned court below in the absence of the petitioner, was pleased to appoint one Sri Srinath Deb Goswami as partition commissioner and the plaintiff no. 2 was directed to pay the entire commissioner's fees of Rs. 6,000/-. Thereafter, the plaintiff no. 1 and defendant nos. 2,3 and 4 i.e. opposite party herein filed a joint application praying for an order to pass final decree in the said suit on the basis of sketch map which was prepared by two private surveyors engaged by the said opposite parties. In the said application, it has been categorically stated by the opposite party that one of sons of the petitioner was present at the time of survey work in the schedule property but the petitioner did not sign in the sketch map prepared by the said private surveyors.

The petitioner submits that the petitioner has filed specific objection contending that the opposite parties are claiming partition whimsically ignoring the court's order for appointment of partition commissioner to make effective partition by metes and bounds. The court below was pleased to appoint commissioner vide order dated 19.4.2018 and directed to pay an amount of Rs. 6,000/- to the commissioner towards commissioner's fee but said amount was not paid by plaintiff no. 2. So the parties were compelled to appoint private commissioner who has also conducted commission work and has given report.

However, at the time of hearing, learned counsel for the opposite party submits that they now want to deposit initial commissioner's fee of Rs. 6,000/- as directed vide order no. 42 and after completion of the commission work, the commissioners total fee may be directed to be shared equally by the parties.

In view of above, the order impugned dated 15.3.2019 is hereby set aside. The opposite parties herein shall pay the commissioner's fee of Rs. 6,000/- to the partition commissioner Sri Srinath Deb Goswami within a period of two weeks from the date of communication of the order and learned Commissioner will conduct the commission work and will submit a report without being influenced by any previous commission work or commission report, within a period of 16 weeks from the date of his appointment. Learned court below will issue writ of commission as soon as initial cost of commissioner's fees would be paid by the opposite parties. At the end, all the parties will bear the total cost of commission work in equal share.

Accordingly, C.O. 1980 of 2019 is disposed of.

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

(Ajoy Kumar Mukherjee, J.)