

June 26, 2023
Sl. No.30
Court No.19
s.biswas

CO 1643 of 2023

Bhutnath dutta @ Bhutnath Datta
vs.
Monmohan Dutta and others

Mr. Surya Prasad Chattopadhyay
Mr. Arjun Samanta

... for the petitioner

Mr. Souradeep Banerjee
Ms. Sanjana Sinha

... for the opposite party no.1

Mr. Srijib Chakraborty
Mr. Ramji Munsi

... for the respondent nos.2, 3 & 4

In the order dated June 13, 2023, the case number C.O. 643 of 2023 be corrected as 'C.O. 1643 of 2023'.

The revisional application arises out of an order dated January 7, 2023, passed in Title Suit No.14 of 2020 by the learned Civil Judge (Senior Division), 2nd Court, Krishnagar, Nadia. By the order impugned, the application for modification of the order of status quo was rejected and consequently the prayer to allow construction on an alleged vacant land, which was a part of L.R. Plot No.2447, was refused.

The petitioner had filed an application allowing construction of a commercial building on a vacant land lying adjacent to his residential house. Such application was filed on the basis of an order passed in an appeal being FMAT 256 of 2022 dated September 8, 2022.

The appeal arose out of an order dated March 25, 2022, by which the learned court below refused

to modify the order of injunction dated February 28, 2020. By the said order, the learned court below had restrained the parties from raising any construction on the suit property. L.R. Plot No.2447 is a part of the suit property, which was incorporated by the plaintiff himself, by amending the plaint.

The Hon'ble Division Bench, while deciding FMAT 256 of 2022 framed the following question:-

“The question is whether either of the parties or both of them should be allowed to proceed with the construction.”

The Hon'ble Division Bench upon hearing the parties passed the following order:

“We are of the view that this suit for partition and administration should be expedited and should be concluded within a maximum period of one year from date.

In the meantime, the entire matter as to whether the parties should be allowed to construct on the subject premises during pendency of the suit should be re-considered by the learned court below. The learned court below should explore the possibility of appointing a special officer or commissioner to visit the property, hold meetings with the parties and try to devise a way to permit construction by the two contesting parties Bhutnath and Santosh. At the same time the court should proceed towards passing a preliminary decree conclusively determining the shares of the three brothers and

thereafter take steps for final partition of the property.

With the above observations we set aside the order dated 25th March, 2022 in Title Sit No.14 of 2020 before the learned Civil Judge (Senior Division), 2nd Court, Krishnagar, Nadia.

The petitions dated 24th January, 2022 and 21st February, 2022 before that court are to be re-considered by the learned judge upon hearing the parties and by a reasoned order to be pronounced within three months of communication of this order.

We clarify that any statement made by us about the shares of the parties is prima facie or tentative.

The appeal (F.M.A.T. 256 of 2022) and the connected application (CAN 1 of 2022) are disposed of.”

The appeal arose out of an order of refusal to modify an order of status quo. The appeal was disposed of with a direction upon the learned court below to re-consider the application and explore the possibility of appointing a special officer or commissioner to visit the property, hold meetings with the parties and devise a way to permit construction by the two contesting parties Bhutnath and Santosh. At the same time, the learned court below was also directed to proceed with the suit and pass a preliminary decree conclusively deciding the shares of the parties.

Thus, it appears to this court that the learned court below was directed by the Hon'ble Division Bench of this court, to once again decide the application for modification. The plaintiff prayed for modification of the order of status quo so that the plaintiff may be able to raise construction on the basis of the sanction plan already obtained.

The plaintiff filed an application on the basis of the order passed by the Hon'ble Division Bench. Prayer was made to explore the possibility of raising construction on the vacant land.

Once again the application for modification was taken up along with the application filled by the petitioner to explore the possibility of allowing the construction and once again the learned court below rejected the application for modification with reasons.

In view of the rejection of the modification application, the question of exploring the possibility of allowing construction, did not arise. Such was the specific finding of the learned court below. Aggrieved by the order of rejection of the modification application, the petitioner has already filed a First Miscellaneous Appeal before the Hon'ble Division Bench.

The direction of the Hon'ble Division Bench with regard to exploring the possibility of raising

construction was a guideline prescribed by the Hon'ble Division Bench, indicating how the modification application should be once again heard and disposed of.

The issue of exploring the possibility of raising construction by appointing a special officer or a commissioner was part of the application for modification and the Hon'ble Division Bench had directed the learned court below to decide the contents of the modification application, with such directions. The rejection of the modification application is the subject matter of an appeal before the Hon'ble Division Bench. Judicial Discipline demands that this court should refrain from interfering with the order impugned. Refusal to explore the possibility of allowing construction by appointing a special officer/ commissioner, merged with the order of rejection of the modification application.

The revisional application is disposed of accordingly as the entire issue is now before the Hon'ble Division Bench.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)