

14.07.2023
Court No.19
Item no.09
CP

C.O. No. 1674 of 2023

Sri Bijoy Kumar & anr.

Vs.

Sri Nadu Kumar & ors.

Mr. Chittapriya Ghosh

Ms. Priyanka Saha

...for the Petitioners.

Affidavit of service is taken on record.

Despite service, none appears on behalf of the opposite parties.

The order impugned is an order by which the learned court below allowed the defendant no. 1 to construct a residential house over 4 decimals of land recorded in R.S. Plot No. 395 of Mouja-Badgram, P.S. Jhalda, District – Purulia, as per the registered deed of sale dated 07.09.1982.

Mr. Ghosh, learned advocate for the petitioners, submits that during the pendency of a partition suit, the learned court passed an erroneous order allowing construction over the 4 decimals of land without considering the following points:

- a) The defendant no. 1 was not a beneficiary under the PMAYG Scheme, but his daughter-in-law was allegedly the beneficiary as was stated in the application.
- b) No documents with regard to grant of such benefit under the housing scheme had

neither been produced before the court below nor ascertained.

- c) The daughter-in-law was not a co-sharer in respect of the land which was the subject matter of the partition suit and third party rights may be created, if the daughter-in-law is allowed to construct on the plot in question.
- d) Without ascertaining exactly the area over which such construction was allowed under the scheme and without checking the sketch plan/diagram, handed over by the authority in case of construction under the PMAYG Scheme, a blanket order could not have been passed.

Having heard the learned advocate for the petitioners, it appears that 23 decimals of land on R.S. Plot No. 395 of Mouja-Badgram was the subject matter of the partition suit which included the alleged 4 decimals. The defendant no. 1 claimed to have purchased the same from Mithu Kumar. The defendant no. 1 is a co-sharer, but his daughter-in-law is not. If the daughter-in-law is allowed to construct in her own name on the said plot, the same might lead to creation of third-party interest. If the daughter-in-law is a beneficiary, the money will be utilized by her and in future she may claim right,

title and interest in respect of such construction. She may also claim right of adverse possession over the said land in respect of which there is a subsisting order of status quo.

In a partition suit, the property is usually protected by an order of status quo. In this case as well, there is an order of status quo. A variation or modification of such order can be made by the learned court if it is found that parties in possession are in emergent need of a proper and habitable living condition and they cannot wait endlessly till the final decree is passed. In such case, repairing and/or construction is allowed with a direction that the party making such construction cannot claim any equity or right in respect of such construction and the construction so made, is always subject to the final decree.

Moreover, in the case in hand, it was essential for the court to verify the correctness of the statements made by the defendant no. 1. Whether the defendant no. 1 wanted to construct on the same area in which he was residing, is also not available from the records.

Thus, the order impugned suffers from the above irregularities and, is, accordingly set aside.

The matter is remanded back to the learned court below for a fresh adjudication on the issue.

Before that, the defendant no. 1 will be entitled to file a detailed application before the learned court below with regard to such construction, clearly disclosing the details of the benefit received from the government, the land in respect of which such benefit was received, the bank transaction and the diagram/sketch map of such construction, that was handed over by the authorities. An undertaking in the form of an affidavit shall be filed by the opposite party, inter alia, stating that the construction shall not create any direct or indirect right in his favour. A declaration from the daughter-in-law (alleged beneficiary) shall be annexed to the affidavit.

When such application is filed, the learned court below shall dispose of the same in accordance with law, upon granting an opportunity of being heard.

Prior to such disposal, an advocate commissioner shall be appointed at the cost of the petitioners in order to demarcate the area in which such construction may be made and the construction should be confined to the portion already possessed by the defendant no. 1.

On the basis of the report of the commissioner and if all other conditions as stated hereinabove are satisfied, the construction shall be made, strictly in accordance with the sketch plan given by the

authorities and the construction so raised, shall be subject to the final outcome of the partition suit.

Neither the defendant no. 1 nor his family members will claim any equity.

The suit shall proceed in accordance with law as the outcome of the above exercise would not have any effect on the trial of the suit.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)