

13th July,
2023
(AK)
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W.P.A 16243 of 2023

Sri Utsab Biswas
Vs.
The State of West Bengal and others

Mr. Sushanta Ghosh
Mr. Subrata Das
...for the petitioner.

Mr. Priyankar Saha
Ms. Shreya Chatterjee
...for the State.

Affidavit-of-service filed in court today be kept on record.

Learned counsel for the petitioner submits that the petitioner has preferred a partition suit against the private respondents.

The petitioner has also obtained an order of injunction against the defendants/private respondents and subsequently a preliminary decree has been passed in the said suit in favour of the petitioner.

Subsequently, however, the petitioner learnt that, allegedly, the defendants have donated the property or a portion thereof to the Block Development Officer (BDO), Bagdah, who is respondent no.4 herein.

The BDO, thereafter, has been raising a construction on the suit property, which might defeat the outcome of the suit.

As such, the writ petition has been preferred against the said action of the BDO.

The petitioner also challenges the veracity and legal effect of the purported gift in favour of the BDO.

Such contentions are controverted by the State.

In the present case, it is seen that a civil suit is already pending. In such pending partition suit, a preliminary decree has already been passed, thereby declaring the shares of the parties thereto, including the petitioner and the private respondents.

However, the partition suit itself is still pending for the purpose of passing a final decree upon a commission being held.

Hence, the relief of the petitioner lies in the partition suit by impleading the alleged donee and seeking appropriate reliefs against the said added defendant.

In such circumstances, it would not be prudent or fair to the parties for the writ court, which does not have the capacity to take detailed evidence, to interfere in the matter.

Accordingly, WPA 16243 of 2023 is disposed of by granting the petitioner liberty to approach the civil court where the partition suit is pending, seeking an impleadment of the alleged donee of the property from the defendants and seeking appropriate interim relief against the said added respondent.

It is further clarified that the action/construction which may be undertaken in the meantime by the parties to the present writ petition shall abide by the result of the writ petition and/or any interim order which may be passed therein.

This court has not gone into the merits of the respective allegations between the parties.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)