

IN THE HIGH COURT AT CALCUTTA
(CIVIL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CO 2338 of 2012

SUDHIR HALDER

VS.

RAJENDRA PRASAD GHOSH & ORS.

For the Petitioner	: Mr. Atarup Banerjee, Adv. Mr. Bapin Baidya, Adv. Mr. Rajdeep Pramanick, Adv.
For the Opposite parties	: Mr. Gopal Ch. Ghosh, Adv. Mr. L. Bhattacharya, Adv.
Hearing concluded on	: 20 th July, 2023
Judgement on	: 16 th August, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Article 227 of the Constitution of India assails the judgment and order dated 31st May, 2012 in Misc. Appeal No. 347 of 2009 passed by learned Additional District Judge, 9th Court at Alipore has preferred this application under consideration.
2. For the sake of convenience the parties will be referred to as they were arrayed before the learned Trial Court.
3. Briefly stated, Sudhir Halder filed a suit for partition before the learned 2nd Munsif, Baruipur in Title Suit No. 30 of 1987. The suit was decreed in the preliminary form, thereafter one of the co-owners Santosh Halder died intestate leaving behind him surviving his widow, son and daughter who sold and transferred the share in favour of

Kalidas Paul, Aruna Mandal. The legal heirs of Balai Halder one of the co-owners sold and transferred her share on 13th march, 2001 in favour of Reba Paul and the transferees as aforesaid got impleaded in the suit for partition and the plaintiff of the said suit for partition filed an application under Section 4 of the Partition Act, 1893 in exercise of his right of preemption or in other words his right to buy off the share of the Stranger purchasers. The said petition was registered as Misc. Case No. 104 of 2001. Learned Trial Court, however, was pleased to reject the said application.

4. Aggrieved by the order of the learned trial court, Sudhir Halder preferred an appeal against such order. It was registered as Misc. Appeal No. 347 of 2009. Learned Appellate Court was pleased to dismiss the appeal on the ground that Section 4 of the Partition Act, 1893 can be pressed into service only in the event the stranger purchaser of share in the dwelling house seeks partition.
5. In the present case, the Stranger purchasers did not approach the court for partition. They purchased the share of the co-owners by two different deeds. Therefore, according to learned Lower Appellate Court the order passed by learned Trial Court was absolutely correct and learned Appellate Court refused to interfere with the said order impugned in the Miscellaneous Appeal. Consequently, the appeal was dismissed. Hence this petition under Article 227 of the Constitution of India, challenging the order of Lower Appellate Court is filed.
6. Mr. Atarup Banerjee, learned Counsel on behalf of the petitioner strenuously argued that share of the dwelling house, since has been transferred to a Stranger purchaser during pendency of a suit for

partition, and the Stranger purchasers stepped in under Order 22 Rule 10 of the Code of Civil Procedure, they have assumed the status of the plaintiffs for the simple reason that in a suit for partition parties to the suit are considered to be plaintiffs. Therefore, the statutory provision as laid down under Section 4 needs to be interpreted in a manner as if the Stranger purchaser had approached the court for partition along with other co-sharers. In order to maintain the sanctity of the family dwelling house, the Stranger purchasers should not have been allowed to intrude. This basic principle behind the legislation was over-looked or not considered by the learned Courts below.

7. Refuting such contention, Mr. Gopal Ch. Ghosh, learned Counsel for the opposite party submits that the Hon'ble Apex Court in the case of ***Gautam Paul vs. Devi Rani Paul*** reported in **(2000) 8 SCC 330** made it clear that Section 4 of the Partition Act, 1893 can only be pressed into service if the stranger purchaser approaches the court for partition and not otherwise. There is no room to interpret Section 4 of the Partition Act, 1893 in any other manner whatsoever.
8. My attention is drawn to the order dated 26th September, 2012 passed by the Hon'ble Co-ordinate Bench by which direction was given to prepare the paper book. From the paper book, I find that the opposite parties purchased dilapidated building with a shop room and go-down. This description given in the schedule of the deed is sufficient to hold that part of dwelling house has been transferred to the Stranger purchasers.
9. Dwelling house is defined in Black's dictionary in the following manner:- Dwelling house – The house or other structure in which

one or more people live :- Residence or abode. When part of the building is used as shop and go-down it loses the character of dwelling house per se.

10. Upon plain reading of Section 4 of the Partition Act, 1893 it appears that where a share of dwelling house belonging to “undivided family” has been transferred to a person who is not a member of such family and such transferee sues for partition, the court shall, if any member of the family being a share holder shall undertake to buy the share of such transferee, make a valuation of such share and direct the sale of such share to the share holder.
11. It goes without saying when statute says a particular thing is to be done in a particular manner, it should be done in that manner and not otherwise. As I have already pointed out the property purchased is not a dwelling house and the Stranger purchaser did not initiate any suit for partition. Therefore, the proceeding under Section 4 of the Partition Act cannot be maintained.
12. The order impugned, in my opinion does not warrant any interference.
13. The Revisional Application is bereft of merit and is dismissed, however, without cost.
14. Let a copy of this order be sent down to the learned trial court forthwith.
15. Urgent photostat certified copy of this judgement if applied for, should be made available to the parties upon compliance of requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)