

04.09.2023

WPA 18961 of 2023

**Tuhin Kumar Dutta
Vs.
The State of West Bengal & Ors.**

Mr. Tanmay Basu
Mr. Manoj Adak

... .. for the petitioner

Mr. Suman Ghosh
Ms. Mita Bag

... .. for the State

Mr. K. Ghosal

... .. for the respondent no.4

Affidavit of service filed on behalf of the petitioner is taken on record.

Report filed on behalf of the State is also taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner and respondent no.4 are brothers. They are the co-sharers of an ancestral property inherited by them. Over a period of time the respondent no.4 started encroaching more portions of the property and after a certain point literally drove the petitioner out of the ancestral home. On the plea that this is an unpartitioned property, the respondent no.4 is trying to grab the whole property and enjoy it himself. He has no right to prevent the petitioner from entering into his property because he is a co-sharer of the same. For this, there is no need to approach a Civil Court, which the private respondent wants so that he can prolong his exclusive enjoyment of the ancestral property.

Learned counsel appearing on behalf of the private respondent no.4 submits as follows. It is an undivided and unpartitioned property. Therefore, the petitioner cannot claim special right to any portion of the suit property.

Learned counsel appearing on behalf of the State relied on the report and submits as follows. The petitioner is now residing at a different place in Serampore, Hooghly. Local inquiry did not substantiate the allegation that the respondent no.4 was restraining the petitioner from entering into his ancestral property.

As would appear from the report filed by the State the respondent no.4 is not preventing the petitioner from entering into the ancestral property.

The case of the respondent no.4 is that the petitioner does not have any special right to any portion of the property as the same is unpartitioned.

Therefore, it appears that the respondent no.4 would not cause and the respondent no.4 shall actually not cause any hindrance if the petitioner wants to enter into the ancestral property.

The respondent police authorities shall keep a sharp vigil at the locale and ensure that no breach of peace is takes place.

In the event any untoward incident takes place or is apprehended by the petitioner, he shall be at liberty to

report to the same to the local police station who shall act in accordance with law.

With the aforesaid observations, the writ petition is disposed of.

As affidavits were not called for, the allegations made are deemed not to have been admitted.

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

(Jay Sengupta, J.)