

11.05.2023
Sl. 2
Ct.No. 23
Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 2639 of 2022
With
CAN 1/2022 + CAN 2/2023

Bilwadas Mondal
Vs
Bhusan Chandra Mondal & Ors.

Mr. Partha Pratim Roy
Mr. Dyutiman Banerjee
Mr. Chiranjib Sinha

...for the petitioner

Mr. Jahar Lal Ray
Ms. Kavita Rani

...for the opposite parties

Learned advocates for the parties are
present.

Heard learned advocates for the parties at
length.

The parties in this revisional application are
the plaintiff and the defendants in a partition
suit. The petitioner being the plaintiff in the
partition suit being the title suit No.765 of 2009
before the learned Civil Judge (Senior Division)
7th Court at Alipore is aggrieved by the orders
dated 28.09.2018 and 01.08.2022 passed by the
learned Judge.

In the instant suit, a preliminary decree was
passed by the learned court below on consent
declaring 1/9th shares of the suit property to all

the parties. Pursuant to the passing of the preliminary decree a partition commissioner was appointed to submit a report. The defendants/opposite parties being aggrieved by the report, as submitted by the learned partition commissioner, made an objection to the same and the same was accepted by the learned trial court.

The petitioner being aggrieved by the order passed by the learned trial court in rejecting the commissioner's report and application for recalling the said order has filed this application under Article 227 of the Constitution of India.

Upon hearing learned advocates for the parties as this court found a chance of settlement the matter was referred to the learned mediator for arriving at a settlement between the parties. Learned Mediator upon holding a meeting with the parties was of the view that the matter can be settled. Pursuant to the mediator's report and the matter was referred to the Block Land and Land Reforms Officer, Thakurpukur Maheshtala Block to appoint a registered Amin for the purpose of measurement of the suit property. Upon the measurement being done, the petitioner/plaintiff has come up with an application for an appropriate order. The

petitioner in the application dated 18.04.2023 prayed for direction upon the Block Land and Land Reforms Officer to appoint a registered Amin to visit the said suit property and to file a report along with sketch map in terms of the schedule 'A' suit property.

Learned advocate for the opposite parties raised an objection to the said application. The opposite parties in para 8 of the affidavit-in-opposition submitted as follows:

“8. That the opposite parties agree that if the Red mark portion as marked in the sketch map annexed with the application is accepted and found.

- i. The front portion is of 25 feet which is extended 10 feet (though the plaintiff is entitled to only 15 feet) is accepted and the Red mark area on physical measurement is found 4172 sq. ft. the defendants are agreeable to the solution as mentioned before the mediator.
- ii. That all the cases (Criminal cases) pending before the criminal court should be withdrawn

That on the above terms the opposite parties are agreeable to settle the matter.”

The petitioner in response to the affidavit-in-opposition has filed a reply contending as follows:

“5. With regard to the statement made in paragraph 8 of the said affidavit, I state the following:

That the petitioner is agreeable to the proposal of the opposite parties that the front portion would be of 25 feet as the front portion is indicated in the sketch map annexed with the application. That if the front portion is of 25 feet and the red portion as indicated in the sketch map is of 4172 sq. ft. then the petitioner is agreeable to the said proposal.

However, it has to be taken into consideration that the share of the plaintiff must not compromise any portion of the suit property which is occupied by any tenant and/or any other occupant and/or is not free from any encumbrance.

If the plaintiff is allotted a share in the suit property, marked in red, measuring about 4172 sq. ft. and not falling within the portions occupied by any tenant, the petitioner and/or any other occupant and/or is not free from any encumbrance is agreeable to the proposal of the

opposite parties of having 25 sq.ft. front space or frontage.

Further, the petitioner is agreeable to the proposal of withdrawing the criminal charges levelled against the opposite parties if the opposite parties are also agreeable to return the same gesture and withdraw the criminal charges pending against the petitioner. The petitioner is agreeable to withdraw at the time of passing of the final order and decree and simultaneously with the opposite parties i.e. at the time when the opposite parties shall also withdraw all their criminal complaints, Criminal proceedings, charges, FIR's, if any."

Upon considering the affidavits of the parties and upon hearing learned advocates for the parties this court is of the view that the suit for partition is adjusted by lawful settlement between the plaintiff/ petitioner and the defendants/opposite parties.

As the parties have agreed to settle the dispute by a lawful compromise nothing remains in this revisional application to be decided.

The matter is remitted back to the learned court below to pass a decree in the partition suit on the basis of the compromise and settlement arrived at between the plaintiff/petitioner and

the opposite parties/defendants as stated in paragraph 8 of the affidavit-in-opposition and paragraph 5 of the affidavit-in-reply along with the sketch map annexed to the application for appropriate order dated 18.04.2023 being CAN 2 of 2023.

It is, however, also made clear that as the settlement/compromise with regard to the area on compromise of the plaintiff finally, the learned court below is directed to decide the areas of the other defendants in accordance with law either by amicable settlement between the parties or necessary appointment of the learned partition commissioner thereafter dispose the suit by final decree.

Necessary demarcation of the plaintiff's area may be done in accordance with law as already settled between the parties.

As the parties have agreed to withdraw the criminal charges pending against each other, they are directed not to proceed with the said criminal proceedings till the disposal of the partition suit.

Let affidavit-in-opposition, affidavit-in-reply to the application being CAN 2 of 2023 and the said application be treated as a part of this order in this revisional application.

Thus, the revisional application and the connected applications, if any, are accordingly disposed of.

Learned mediator appointed in this case is discharged.

Urgent certified photocopy of this order, if applied for, be given to learned advocates for the parties upon compliance of all requisite formalities.

(Biswaroop Chowdhury,J.)