

October 13, 2023
Sl. No.7
Court No.19
s.biswas

CO 3575 of 2023

Sumanta Kumar Dawn

vs.

Somenath Dawn and others

Mr. Biswaroop Bhattacharya
Mr. Arup Nath Bhattacharyya
Ms. Sayani Das
Ms. Sreetama Biswas

... for the petitioner

Mr. Kushal Chatterjee
Mr. Oishik Chatterjee

... for the opposite party nos.1 to 3

The petitioner/one of the defendants in Title Suit No.19 of 2000 has preferred this revisional application, being aggrieved by an order dated August 16, 2023 passed by the learned Civil Judge (Senior Division) at Sealdah, North 24 Parganas, in Misc. Case No.20 of 2023.

By the order impugned, the learned Civil Judge (Senior Division) at Sealdah has granted a limited stay of the judgment and decree dated May 18, 2023 passed in Title Suit No.19 of 2000 till October 13, 2023.

It is urged by Mr. Bhattacharya, learned advocate for the petitioner, that the review application itself is not maintainable. Without considering the prima facie case, the balance of convenience and inconvenience and without hearing the petitioner, the learned court ought not to have stayed the operation of the judgment and decree. Reference has been made to pages 54 and 61 of the revisional application which indicate that the

affidavit of evidence in chief of Smt. Manjushree Dawn was also filed. Mr. Bhattacharya submits that evidence of Smt. Manjushree Dawn was recorded on commission. Mr. Bhattacharya relies on a document which is Annexure G (page 63) to the revisional application. The same is a letter written by Smt. Manjushree Dawn expressing her willingness to accept the partition.

Mr. Chatterjee, learned advocate for the opposite parties, disputes such letter.

Mr. Bhattacharya submits that the documents which were available with the learned court should have been looked into before the judgment and decree was stayed.

Mr. Chatterjee, learned advocate for the opposite party no.2/Smt. Manjushree Dawn, submits that the final decree was passed upon recording the consent. The objection with regard to erroneous recording ought to be raised before the court which passed the order. Thus, the review application was filed. The person who gave consent allegedly another acted on behalf of the plaintiffs in the partition suit, without any authorization.

The issues which have been raised by both the learned advocates for the respective parties are to be decided by the court which passed the judgment and decree. Whether there was consent or whether the

learned court had recorded the consent wrongly, can best be decided by the learned trial court itself and not by this court.

Under such circumstances, this court is of the view that the application for review along with the application for stay, should be disposed of within a month after reopening of the court after the ensuing puja vacation and should be heard by the learned court which passed the judgment and decree.

I do not find any reason to interfere with the order impugned as the learned court has decided to hear out the parties.

In the meantime, the petitioner is entitled to file his written objection to the stay application and also the review application, which shall be adjudicated by the learned court below, in accordance with law.

The revisional application is thus disposed of.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)