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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

C.O. 124 of 2022

In the Matter of : Sri Samarjit Banerjee & Ors.

Mr. Subhankar Dutta ... for the petitioners

Mr. Deborshi Dhar ... for the purchaser

This revisional application assails the Order No. 130 dated 05.02.2021 passed by the learned Civil Judge, Senior Division at Siliguri in Partition Suit No. 34/2006 taking into consideration the mediation report learned Trial Court allowed the plaintiff to withdraw the suit treating the report of the learned Mediator as part of the order impugned.

It is submitted by Mr. Dutta, learned counsel appearing on behalf of the petitioners that in a suit for partition preliminary decree determining the share of co-owners was passed on 31.8.2012. Thereafter, the plaintiff filed a petition for final decree in terms of the preliminary decree with the help of learned Commissioner. In the meantime, pending such application the matter was referred to mediation and learned Mediator submitted the report. The report reveals that the plaintiff was represented by his constituted attorney. The defendants expressed their no objection towards withdrawal of the suit, as prayed for by the plaintiff.

It is submitted at the Bar that the parties did not appear before the learned Mediator.

From the report of the learned Mediator, I find that Santanu Banerjee and Arjun Banerjee participated in the mediation. But they are not parties to the suit. One Mr. Kartick Basak represented defendant nos. 2(i),(ii)and (iii). It further reveals that one Sourav Sarkar represented the defendant no. 1 (i), (ii), 3,4,6 and 7

The petitioners are the legal heirs of defendant no. 1. Sri Tamal Krishna Banerjee (since deceased), it is submitted by the learned counsel representing the petitioners that the petitioners did not attend the mediation proceeding and it took place keeping the petitioners in dark. It is further pointed out that defendant no. 9 was not a party to the mediation proceeding.

Upon perusal of the order impugned, I find that the learned Trial Court allowed the plaintiff to withdraw the suit under Order XXIII Rule 1 of the Code of Civil Procedure based on the report of the learned Mediator.

While passing the order impugned, learned Trial Court failed to take into consideration that all the parties to the suit did not attend the proceeding before the learned Mediator. A mediation could not have been done in absence of all the parties, upon hearing the power of attorney holder and the learned counsel for some of the parties. Learned Trial Court, in my opinion fails to exercise jurisdiction and the Order No. 130 dated 05.02.2022 appears to be perverse and set aside.

Mr. Dhar, learned counsel appearing on behalf of the stranger purchaser submits that his client has purchased undivided 7 / 10th share from the co-owners.

While quashing the order impugned dated 05.02.2021, I direct the learned Trial Court to readmit the Title (Partition) Suit No. 34 of 2006) to its file, allow the substituted defendants who stepped into the shoes of Defendant no. 1 sine deceased, to get transposed to the status of plaintiff, if the plaintiff is not willing to proceed with the suit.

Liberty is given to the stranger purchaser to approach the Court for being added as party – defendant.

The revisional application, is thus, disposed of.

Let a copy of the order be sent down to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)