

S/L 27
20.03.2024
Court. No. 3
Suwayan

CO 1040 of 2022

Sri Suniti Kumar Sarangi
Vs.
Ratan Chandra Sau & Ors.

Mr. Sounak Bhattacharya
Ms. Madhumanti Das

...for the petitioner.

Mr. Sandipan Banerjee
Mr. Pinaki Ranjan Chakraborti
Ms. Puja Banerjee

...for the opposite party nos. 1 & 2.

1. Heard.
2. In this revisional application as filed under Article 227 of the Constitution of India the revisionist being the plaintiff in a suit for partition has impugned the judgment dated 05.03.2021 passed by learned Additional District Judge, 2nd Court, Contain in Misc. Appeal No. 49 of 2016 whereby and whereunder the said appellate court while dismissing the said appeal affirmed the order of rejection dated 20.09.2016 passed by learned Civil Judge (Sr. Division), 1st Court, Contai, Purba Medinipur in J. Misc. Case No. 41 of 2013 in connection with an application under Section 4 of the Partition Act as filed by the plaintiff.
3. In course of his submission Mr. Bhattacharya, learned Advocate for the plaintiff/revisionist at the very outset draws attention of this Court to the petition under Section 4 of the Partition Act as filed by his client before the Trial Court which has

been registered as J. Misc Case No. 41 of 2013 in a suit for partition being Title Suit No. 10 of 2008 and which has been decreed in preliminary from by the said Trial Court. It is contended by Mr. Bhattacharya that schedule 'Ka' property of the application under Section 4 of the Partition Act hereinafter referred to as the 'said application' is the suit property in Title Suit No. 10 of 2008 which is a suit for partition.

4. According to Mr. Bhattacharya since the defendant Nos. 5 and 6 of Title Suit No. 10 of 2008 that is the opposite party Nos. 1 and 2 herein are the strangers purchasers in respect of the 'A' schedule property of the said application which is the part and parcel of the suit property of the plaintiff, the plaintiff before the learned Trial Court filed the said petition praying for preemption in respect of the said 'A' schedule property.
5. Drawing attention to the certified copy of the judgment as passed in J. Misc. Case No. 41 of 2013 by the Trial Court it is argued on behalf of the plaintiff/revisionist that learned Trial Court while disposing the said petition being J. Misc. Case No. 41 of 2013 has failed to visualize that 'A' schedule property of the said petition froms part and parcel of the suit property which is the 'dwelling house' of the plaintiff as well as defendant Nos. 2 to 6 of Title Suit No. 10 of 2008 and thus, proceeded in a wrong direction in holding that the

plaintiff/revisionist before this Court is not entitled to get any relief under Section 4 of Partition Act.

6. Drawing attention to the impugned judgment as passed by the first appellate court, it is further argued by Mr. Bhattacharya, learned Advocate for the revisionist/plaintiff that in the said judgment the first appellate court has practically echoed the versions of the Trial Court without assigning any cogent reason for affirming the judgment of the Trial Court. It is further contended by Mr. Bhattacharya that the learned first appellate court has also failed to visualize the true meaning and implication of the word 'dwelling house' within the meaning of Partition Act and, thus, failed to consider that the petition under Section 4 of the Partition Act as filed by the present revisionist/plaintiff before the Trial Court has got sufficient merit.
7. Mr. Bhattacharya, learned Advocate thus contends that it is a fit case for allowing the instant revisional application by setting aside the impugned judgment as well as the Order No. 102 dated 20.09.2016 as passed in J. Misc. Case No. 41 of 2013 by the Trial Court.
8. *Per contra*, Mr. Chakraborty, learned Advocate for the opposite parties in course of his submission at the very outset draws attention of this Court to page Nos. 39 and 45 of the instant revisional application which is a report of the Advocate

Commissioner together with field note as prepared by learned Advocate Commissioner as appointed by Trial Court in connection with J. Misc. Case No. 41 of 2013.

9. It is argued by Mr. Chakraborty that the said Advocate Commissioner's report has been marked exhibit in J. Misc. Case No. 41 of 2013 and thus, formed part of evidence. Drawing attention to page No. 45 that is the field note as prepared by the said Advocate Commissioner it is submitted by Mr. Chakraborty that on perusal of the hand written sketch map together with index as prepared by Advocate Commissioner it would reveal that 'A' schedule property of the said petition consisting of two shop rooms are situated at the extreme southern side of the suit property and those two shop rooms are situated by the side of a road connecting Itaberia and Heria. It is further argued by Mr. Chakraborty that both the Trial Court as well as the first appellate court while considering the said application and the appeal came to a concurrent finding that even if the 'A' schedule property being two shop rooms are occupied by the opposite party Nos. 1 and 2 herein such occupation cannot cause any hindrance to the peaceful use and occupation of the dwelling house of the plaintiff and the other defendants.
10. On perusal of the entire materials as placed before this Court *vis a vis* the judgments as delivered by

the Trial Court as well as the first appellate court it appears to this court that both the Trial Court as well as the first appellate court in their respective judgments have duly considered the true meaning and purport of the word 'dwelling house' in the perspective of Partition Act. It appears from the impugned judgment as passed by the first appellate court that the first appellate court after relying upon various judgments as passed by this High Court as well as by other High Courts expressed the following view:

“The Hon’ble High Court in Manick Lal Singh’s case had discussed Khirode Chandra’s case and Dulal Chandra Chatterjee vs Gosthabehari Mitra : AIR 1953 Cal 259. In the second case it was observed that family dwelling house does not cease to be so within the meaning of Section 4(1) of the Partition Act simply because it is let not to tenant of the ordinary kind. In Manick Lal’s case the Hon’ble Court had laid down:

“We may say from the aforesaid two decisions that a dwelling house includes the portion of the structure which was actually used for residential purpose together with such other structures and all such lands which were used as part of residential house and it would be inconvenient if those parts be

detached from the residential portion.”

The Hon’ble Court in the said case had proceeded to determine for ‘dwelling house’ whether the house in question was used by the members of the family for residential purpose; secondly, it would include not merely the structure where the members of the family actually reside or used to reside but it would include all appurtenants, that means, if there is a court-yard which was used by the members, such a court-yard, if there was another structure, as for example, a kitchen or a cowshed or a shed for garage, if those are or were used by the members of the family as parts of their residential house, all such parts would also be included within the word dwelling house. Based upon such observations, it is very clear and explicit that dwelling house need not consist only of a residential unit but all such appurtenances and curtilage which are necessary for the beneficial enjoyment of the house and must form a compact block. The residential unit in the present case appears to have been situated in the extreme northern portion of the A schedule property which consists of two shop rooms and their position gives no impression that the said A schedule is required for the beneficial enjoyment of the

undivided family. No such pleading had been there. It may be that if the entire suit Dag is considered, the pond along with its bank and further the A schedule comprises a compact block in one Dag, but neither are the shop rooms linked to the residential unit, nor have anything been averred to the effect that according to the status of the appellant, the A schedule property would be necessary for convenient occupation according to his status and financial position as held in Manick Lal Singh's case. The purchase was made in the year 2004 and since then the shop room is running. This, as held by the Ld. Trial Court, may not be the question of limitaiton but the consideration of a practical situation which was in existence four years prior to the filing of the partition suit. Therefore, in my opinion, an expressive averment was necessary to explain how A schedule property was required for the beneficial enjoyment of the undivided family and how such need was felt after a certain period of time for, it is not the requirement of the appellant alone which is to be considered. It must be the requirement of the entire undivided family.”

11. In considered view of this Court the view taken by the first appellate court in the impugned judgment with regard to the true meaning and purport of dwelling house, the reason assigned by the first appellate court as to how 'A' schedule property of the said application though is a part and parcel of the suit property but does not come under the purview of dwelling house for claiming preemption is found to be absolutely justified.
12. On perusal of the entire materials especially the sketch map as available in the field note as prepared by learned Advocate Commissioner which has been exhibited before the Trial Court it also appears to this Court that the occupation of the present opposite party Nos. 1 and 2 in respect of the 'A' schedule property does not cause any hindrance either to the plaintiff or to the remaining defendants in peaceful enjoyment of the suit property of the plaint of Title Suit No. 10 of 2008 and thus, there cannot be any justification to hold that the 'A' schedule property of the said application though is a part and parcel of the suit property but does not come under the purview of part and parcel of the dwelling house as claimed by the revisionist/plaintiff.
13. In view of the discussion made hereinabove, this Court thus finds no merit in the instant revisional application.

14. Accordingly, the instant revisional application being CO 1040 of 2022 is dismissed.
15. Consequently, the impugned judgment dated 05.03.2021 as passed by learned Additional District Judge, 2nd Court, Contai in Misc. Appeal No. 49 of 2016 as well as Order No. 102 dated 20.09.2016 as passed by learned Civil Judge (Sr. Division), 1st Court, Contai, Purba Medinipur in J. Misc. Case No. 41 of 2013 are hereby affirmed.
16. There shall be no order as to costs.
17. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)