

01.04.2024
Sl.No. 56
Ct. 32
Amalranjan

In The High Court At Calcutta
Criminal Revisional Jurisdiction
Appellate Side

CRR 1933 of 2021

Anupam Ghorai and ors.
Vs.
The State of West Bengal and ors.

Nobody appears on behalf of the petitioners on call.
Even on earlier occasion no one represented the petitioners.
No accommodation sought for.

This case pertains to the year 2021, the nature of prayer and to avoid further delay record is taken up for the purpose of disposal on merit.

The instant revisional application has been filed by the petitioners under sections 401 read with section 482 of the Criminal Procedure Code, 1973, challenging the correctness for legality and propriety of the order dated 6.9.2021 passed by the learned Additional District and Sessions Judge , 1st Court at Kakdwip in Criminal Revision No. 10/2021 thereby setting aside the impugned order dated 13th July, 2021 passed by the learned Sub Divisional Executive Magistrate, Kakdwip in MF Case 525/2021 under section 144(2) of the Criminal Procedure Code, 1973.

The brief facts of the instant case is that the petitioners are the lawful absolute owner/raiyats of the plot of lands measuring an area of 17 decimals out of 24 decimals

and peacefully occupying possession and enjoying Bastu land together with structures thereto. The same was damaged and destroyed in the “Umphan Storm”. As such they started reconstruction of the dwelling house after getting permissions from Pratapadityanagar Gram Panchayat. Their names are also recorded in the record of rights as LR plot no. 3746 under PS Kakdwip, J.L no. 11 Mouza Ganeshpur, butted and bounded by at the North Public concrete pathway, South –Rs plot no. 2884 being the land of the petitioners at the East the land of Zilla Parishad and in the West remaining portion of 7 decimals of the same plot number. The private opposite parties are the owner of 4 decimals of land and both the parties had been occupying the possession. Some disputes arises between the parties over the said dwelling house. Over the said issue the Title Suit no. 42/2021 (Partition) is pending before the learned Civil Judge (Senior Division) at Kakdwip and also allegedly filed a false application under section 144 (2) of the Criminal Procedure Code before the learned Executive Magistrate, Kakdwip being no. MF 454/2021 and after admitting the said proceeding the learned Magistrate has passed the order, inter alias, as follows:

“1st party files hazira, 2nd party file hazira. Both parties are present and heard by this court patiently and gone through all the papers and documents of the CR thoroughly. T.S. case no. 42/21 is pending on this land before the learned Civil Judge, Senior

Division, Kakdwip, but no injunction order is there on the land of the Civil Court. Now it is ordered this court order dated 28.6.2021 of this case will stand on the condition on the part of the land on which the 1st party is constructing dwelling house, the 1st party have absolute possession and existing LR Record on this day. This court opines the dispute among the 2 parties require lawful demarcation with the order of Learned Civil Court is repaired of the land to be solved completely. This order will exist till any further order of this court or the Civil Court. Any order of Ld. Civil Court regarding this issue will supersede this order. The B.L. & L.R.O. is requested to submit report as early as possible realizing the sensibility of this case.”

The said order was challenged by the opposite parties by way of filing a revisional application before the District and Sessions Judge. The same was transferred to the learned District and Sessions Judge, First Court Kakdwip, South 24 Parganas and finally after hearing both the parties the learned Additional District and Sessions Judge, Kakdwip allowed the revisional application and finally set aside the impugned order dated 13th July, 2021 passed by the learned Magistrate, Kakdwip in MF Case no. 525/2021.

Having considered the applications along with the annexures thereby a dispute arises between the parties by

filing a Title Suit Pending between the parties over the issue of the disputed land. The nature of dispute is a purely civil in nature. Even knowing the said facts, the learned Executive Magistrate has passed the aforesaid order for lawful demarcation between the parties i.e., beyond his jurisdiction.

Learned Additional District Judge also observed the Executive Magistrate was not justified and erred in passing the impugned order dated 13th July, 2021 and finally set aside.

I also concurred the observation made by the learned Additional District Judge when there is a civil suit pending between the parties such demarcation order should not be passed by the Executive Magistrate.

Accordingly, the impugned order is rightly set aside.

Under the above facts and circumstances of the case, this court do not find any illegality or any error in passing such order.

Under such circumstances, this case is devoid of merit and liable to be dismissed.

In the light of the above observations and discussions **CRR 1933 of 2021** is, thus, dismissed without order as to costs.

Interim order, if any, stands vacated.

Let the order be communicated to the Ld. Court below for information.

Liberty is granted to all parties to act in terms of the copy of this order downloaded from the official website of this court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties taking all legal formalities.

(Ajay Kumar Gupta, J.)