

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.O. No. 3367 of 2023

Smt. Maya Rani Halder

-Versus-

Shree Mrityunjoy Kayal & Ors.

For the Petitioner : **Mr. Gautam Das,
Ms. Aparna Mondal,
Mr. Mrinal Kanti Sardar.**

For the Opposite Parties : **Mr. Sandip Das.**

Hearing concluded on : **14.06.2024**

Judgment On : **27.06.2024**

Prasenjit Biswas, J:-

1. The instant revisional application is directed against the impugned order dated July 24, 2023 passed by the Learned Civil Judge (Senior

Division), Diamond Harbour, South 24 Parganas in connection with Title Suit No. 132 of 1996.

2. By passing the impugned order learned Trial Court declined to accept the valuation report as submitted by the ADSR Ghateswar and directed the District Collector to submit fresh valuation in respect of the suit property in terms of the order of this Court passed in connection with C.O. No. 686 dated 06.05.2015. The District Collector was further directed to submit such valuation which should be assessed by applying transparent and cogent method of assessing valuation of the suit land as on 05.05.2001 and if necessary by comparing with other title deeds of the relevant period in respect of land of the suit Mouza and by causing inspection of the suit property by any competent officer under him.

3. Feeling aggrieved and dissatisfied with the impugned order passed by the learned Trial Court the instant revisional application has been filed at the behest of the present petitioner/defendant no. 2.

4. The plaintiffs/opposite parties nos. 1 to 7 (herein) instituted a suit for partition being Title Suit No. 132 of 1996 against the other co-sharers before the Civil court which was decreed in preliminary form. By the said decree the plaintiffs/opposite parties Nos. 1 to 7 (herein) were declared to be the owners of the suit property to the extent of 36 decimals of land. On 05.05.2001 an application was taken out on behalf of the present petitioner seeking to preempt the share of the stranger purchaser and under takes to buy the same at the market price. The learned Trial Court allowed the said petition filed by

the petitioner by passing the order dated 03.09.2008 holding interalia giving permission to the petitioner (herein)/ defendant no. 2 to buy up the shares of the plaintiffs in the suit property. Plaintiffs are further directed to transfer their shares to the suit property in favour of the defendant no. 2 at a price to be settled between the parties within one month of passing of the said order and failing which defendant no. 2 will be at liberty to take steps for obtaining valuation of the suit property measuring 36 decimals of land from the Collector, South 24 Parganas. A requisition was sent to the Collector, South 24 Parganas for sending the valuation statement in respect of the portion of the stranger purchaser and in reply to that the Collector submitted the report as to the market value of the property indicating the value at Rs. 10,37,569/-. But astonishingly the said report submitted by the Collector is silent as to whether such market value has been ascertained on the date of the said memo or on the date when the petitioner applied to purchase the share of the stranger purchaser before the Trial Court.

5. Being aggrieved with the said valuation report submitted by the Collector, South 24 Parganas the present petitioner filed an application before the learned Trial Court praying interalia for giving direction upon the Collector, South 24 Parganas to assess the market value of the share of the stranger purchaser as on 05.05.2001 as the Collector made the valuation of the subject property according to present market value. The learned Trial Court rejected the petition filed by the present petitioner and accepted the

said valuation report as submitted by the Collector, South 24 Parganas by passing an order dated January 3, 2015.

6. Being aggrieved and dissatisfied with the said order dated January 3, 2015 passed by the learned Trial Court the present petitioner filed a revisional application being C.O. No. 686 of 2015 before this Court under Article 227 of the Constitution of India. The said revisional application was disposed of by this Court directing the Trial Court to issue a fresh memo to the Collector, South 24 Parganas with a specific direction that the market value of the share of the stranger purchaser shall be ascertained as on 5th May, 2001 and with further direction upon the Court so that the report should reach within 3 weeks from the date of issuance of the memo. In pursuance of the said direction the Collector, South 24 Parganas sent the valuation report to the Court and it was kept with the records. An application was taken out on behalf of the petitioner before the Trial Court with a prayer to direct the plaintiffs to execute and register the proposed deed of conveyance in respect of subject property by accepting the price/consideration money but unfortunately that petition was pending adjudication since for a long time. After that opposite party no. 7 (herein) filed an application before the learned Trial Court with a prayer to appoint an advocate commissioner for the purpose of valuation of the subject property by rejecting the report as submitted by the Collector, South 24 Parganas.

7. But unfortunately the said application was also pending for adjudication. Finding no other alternative the present petitioner preferred an

revisional application being C.O. No. 1742 of 2021 filed under Article 227 of the Constitution of India before this Court with a prayer for expeditious disposal of all the pending interlocutory application filed in connection with Title Suit No. 132 of 1996 pending before the learned Trial Court. The said revisional application was disposed of by this Court giving direction upon the learned Trial Court to dispose of all the pending interlocutory application filed in connection with that title suit as expeditiously as possible and in any event within the period of 3 months from the communication of the said order without granting any adjournment to either of the parties. After receiving the said direction passed by this Court the case was again set in motion.

8. The A.D.S.R Ghateswar deposed before the learned Trial Court in connection with the valuation report as submitted before it. After taking deposition of the A.D.S.R Ghateswar the learned Trial Court passed the impugned order by which it declined to accept the valuation report as submitted by the Collector and directed to issue a fresh memo to the collector to submit the market value of the share of the stranger in terms of the order passed by this Court in connection with C.O No. 686 dated 06.05.2015.

9. Mr. Gautam Das learned Counsel appearing on behalf of the petitioner submits that the Trial Court committed wrong in rejecting the valuation report submitted by the A.D.S.R Ghateswar, South 24 Parganas as the report of valuation suffers from no infirmity and the valuation put forth therein is quite reasonable and should be accepted by the learned Trial Court. It is further submitted by the learned Counsel that the matter is pending since for

a considerable period of time and on the instance of the petitioner the learned Trial Court took the petition as submitted by the petitioner for hearing and passed the impugned order. At last it is submitted that the present petitioner is an octogenarian lady and as such order may be passed directing upon the learned Trial court to dispose of the matter expeditiously as possible.

10. Mr. Sandip Das learned Counsel appearing on behalf of the opposite parties nos. 1 to 7 assailed before this Court that there is no illegality or irregularity in the impugned order passed by the learned Trial Court. Learned Counsel draws attention of the Court about the deposition made by the A.D.S.R in which he categorically admitted that the earlier directions as given by this Court in C.O. No. 686 of 2015 has not been complied with and there are several lacunas in the matter of assessing the valuation of subject property. As the valuation as submitted by the A.D.S.R has not been made in terms of the order passed by this Court it ought to have been cancelled and the learned Trial Court is justified in passing the impugned order declining to accept the valuation report as submitted by the A.D.S.R.

11. Learned Counsel cited a decision rendered by the Hon'ble Apex Court in case of **Sadhana Lodh Vs. National Insurance Co. Ltd. And Another** reported in **(2003) 3 SCC 524**. The attention of this Court is drawn to the paragraph 6 of the said decision which states inter alia that:-

“Where a statutory right to file an appeal has been provided for, it is not open to High Court to entertain a petition under Article 227 of the Constitution. Even if

where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court under Section 115 of CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of an illustration, where a trial Court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision under Section 115 C.P.C., in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State legislature has barred a remedy of filing a revision petition before the High Court under Section 115 C.P.C., no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of High Court under Article 226 of the Constitution.”

12. So, it is submitted by the learned Counsel that the present revisional application is not at all maintainable in view of decision referred above and it may be rejected outright.

13. I have considered the rival submissions advanced by both the parties and have perused the impugned order passed by the learned Trial Court.

14. In case of *Sadhana Lodh* the insurer has a remedy by filing an appeal before the High Court and a statutory right to file an appeal has been provided for. So, the Apex Court observed that it is not open to the High Court

to entertain petition under Article 227 of the Constitution of India. Where remedy for filing a revision before the High Court under Section 115 of C.P.C has been expressly barred by a State enactment in such case a petition under Article 227 of the Constitution would lie.

15. In case of maintainability of the present revision petition filed under Article 227 of the Constitution of India it is worth quoting the observation made by the Hon'ble Apex Court in case of **Raj Shri Agarwal alias Ram Shri Agarwal and Another vs Sudheer Mohan and Others** reported in **2022 SCC OnLine SC 1775** which interalia held as under-

“By the impugned judgment and order, the High Court has dismissed the writ petition, under Article 227 of the Constitution of India, observing that the writ petition, under Article 227 of the Constitution of India, is not maintainable as remedy by way of revision under Section 115 CPC is available to the appellants/plaintiffs. As observed by this Court in catena of decisions and even in the decisions considered by the High Court, the view taken by this Court is that where there is availability of remedy under Section 115 CPC normally “the petition under Article 227 of the Constitution of India would not lie”. That does not mean that writ petition, under Article 227 of the Constitution of India, shall not be maintainable at all. There is a difference and distinction between the entertainability and maintainability. The remedy under Article 227 of the Constitution of India available is a constitutional remedy under the Constitution of India which cannot be taken away. In a given case the Court may not exercise the power under Article 227 of the Constitution of India if the Court is of the opinion that the aggrieved party has another efficacious remedy

available under the CPC. However, to say that the writ petition under Article 227 of the Constitution of India shall not be maintainable at all is not tenable”.

16. So, even if there is remedy available to the petitioner under the Code the constitutional remedy under the Constitution of India cannot be taken away in view of the observation of the Hon’ble Apex Court. If the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure has been expressly barred only in such case the petition filed under Article 227 of the Constitution of India would lie as held by the Hon’ble Apex Court in case of *Sadhana Lodh*. This court is not unmindful that the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is conferred to see whether an inferior court or tribunal has proceeded within its parameters. So I am of the opinion that the ratio rendered by the Hon’ble Apex Court in case of *Sadhana Lodh* is not applicable in the present case. Accordingly, this revisional application filed under Article 227 of the Constitution of India is maintainable.

17. It is admitted position that the plaintiffs/opposite parties nos. 1 to 7 instituted a suit with a prayer for partition in respect of the suit property. The decree was passed declaring the share of the plaintiffs/opposite parties to the extent of 36 decimals of land. Thereafter an application was taken out on behalf of the petitioner with a prayer for buying up the said 36 decimals of land of the said plaintiffs/opposite parties who are stranger purchasers in

the dwelling house belonging to undivided family. The order was passed by the learned Trial Court in which it allowed the petition submitted by the petitioner and directed the plaintiffs to transfer their shares in the suit property to the defendant no. 2/ petitioner (herein) at price to be settled between the petitioner and failing which liberty was given to this petitioner to take appropriate step for obtaining valuation of the suit plot measuring about 36 decimals of land from the Collector, South 24 Parganas. The report submitted by the Collector, South 24 Parganas was silent as to whether such market value has been assessed on the date of the memo or on the date when the petitioner filed petition with a prayer to purchase the share of the stranger purchasers before the Trial Court. In pursuance of the direction of this Court memo was issued to the Collector who in turn submitted the fresh valuation report before the Trial Court which was assessed taking note of the date as 15th May 2001. But the said report did not disclose that how it was assessed. There was a direction passed by this Court that the fresh valuation should be assessed by applying transparent and cogent method of assessing valuation of the suit land as on 05.05.2001 and if necessary by comparing with other title deeds of the relevant period in respect of the subject land and if necessary by causing inspection of the suit property by any competent officer under him.

18. The concerned A.D.S.R. deposed before the Court that the market value of the suit plot would be Rs. 10,000/- per decimal as on 05.05.2001 and since the concerned property measures more than 1 bigha its valuation would be set at Rs. 8,000/- per decimal but he failed to depose on what basis such

depreciation of Rs. 2,000/- per decimal was calculated and admitted that there is an existence of residential house of the subject property which is an important factor for ascertaining the valuation of the concerned property but there is no mentioning in the valuation certificate whether there is any residential house situated upon the suit property or not. At the time of giving deposition the A.D.S.R admitted that the valuation of the property concerned may be assessed by comparing with valuation of other Bastu land that were transferred from the said Mauza during the year 2001. So, I have no hesitation in my mind that proper procedure was not adopted by the A.D.S.R in assessing the valuation of the suit property. After taking into note of the deposition of the concerned A.D.S.R the impugned order was passed by the learned Trial Court in which it held that the valuation report as submitted by the District Collector has not been prepared in terms of the order passed by this Court in connection with C.O. No. 686 dated 06.05.2015 and it can be directed for fresh valuation to be assessed by the District Collector by applying transparent and cogent method of assessing valuation of the suit land as on 05.05.2001.

19. I find that the proper course has not been taken by the Collector, South 24 Parganas in assessing the valuation of the subject land and this fact was admitted by the concerned A.D.S.R at the time of giving deposition. So fresh direction was given upon the District Collector to assess the valuation in terms of the earlier order passed by this Court.

20. I find that there is no illegality and irregularity in the impugned order and so no interference can be warranted. Accordingly, I find that there is no merit in the present revisional application and it is liable to be dismissed.

21. Accordingly, the present revisional application filed by the petitioner is hereby dismissed on contest but without any order as to costs.

22. Since the matter is pending for a considerable period of years the Trial Court is hereby directed to issue a fresh memo to the Collector, South 24 Parganas with a specific directions to assess the market value of the share of the stranger purchaser as on 5th May, 2021 as directed by the learned Trial Court at the time of passing the impugned order. The learned Trial Court shall see that the report reaches to the Court within two weeks from the date of issuance of the memo. After receiving the report from the Collector South 24 Parganas the learned Trial Court shall dispose of the application within one month thereafter without giving unnecessary adjournment to either of the parties.

23. The revisional application is hereby disposed of.

24. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)