

24.01.2024
Item No.77
RP
Ct. No.7

CO 3493 of 2023
Secretary on behalf of Dunigram
Janakalyan Samity namely Md.
Kamaruzzaman & Anr.
Vs.
Anikul Hoque @ Sekh & Ors.

Mr. Prasenjit Mukherjee
.... For the petitioner

The order no.23 dated 31.07.2023 passed by the learned Additional District Judge, Fast Track Court at Rampurhat, Birbhum in Title Appeal No.46 of 2018 is under challenge in this application under Article 227 of the Constitution of India at the instance of the defendant nos.9 and 10. The title suit, being no.27 of 2013, for declaration of title and partition stood dismissed by a judgment and decree dated May 29, 2018. The opposite party no.1 herein preferred Title Appeal No.46 of 2018, which is pending before the learned Additional District Judge, Fast Track Court at Rampurhat, Birbhum.

By the order impugned, the prayer of the opposite party for repairing of the cycle repairing shop, which is situated in the suit property, was allowed.

The learned advocate appearing for the petitioner submits that the suit plot is a vested land and the patta, which was earlier granted in favour of the appellant, was annulled by the order passed by the competent authority. He further submits that the opposite party challenged the order for annulment of patta before the West Bengal Land Reforms and Tenancy Tribunal but such application was subsequently withdrawn by the opposite party herein. He further submits that since the opposite party herein has no manner of right, title and

interest in the suit plot, no order allowing repairing ought to have been allowed by the learned Judge of the Court below.

It is not in dispute that challenging the judgment and decree dated May 29, 2018 passed in TS 27 of 2013, the Title Appeal No.46 of 2028 is pending. The issue as to whether the plaintiff/opposite party has any right, title and interest in the suit property shall be decided in the Title Appeal which is pending.

The learned Judge of the Court of Appeal below after taking into consideration the Commissioner's report arrived at a factual finding that the tin shed over the shop of the appellant i.e. the opposite party herein requires necessary repairing along with its pillars. Such factual finding cannot be interfered with by this Court in exercise of power under Article 227 of the Constitution of India.

For the aforesaid reasons, CO 3493 of 2023 stands disposed of by requesting the Learned Additional District Judge, Fast Track Court at Rampurhat, Birbhum to dispose of the Title Appeal No.46 of 2018 as expeditiously as possible without granting any unnecessary adjournments to either of the parties within a period of four months from the date when the said appeal is made ready for hearing.

(HIRANMAY BHATTACHARYYA, J.)