

05.04.2024
Item No.14
Ct. No. 7
KS

C.O. 3512 of 2023
Sri Tapas Bhowmik
Vs.
Smt. Sabitry Roy & Ors.

Mr. Satyendra Agarwal
Mr. Tarak nath Sarkar
.....for the Petitioner
Mr. Pulak Ranjan Mandal
Ms. Bandana Mandal
.....for the O.P. Nos.6, 8 & 9
Mr. G. Mallik
.....for the Commissioner

1. The plaintiff no.2 in a suit for partition and for other consequential reliefs have filed this revisional application under Article 227 of the Constitution of India challenging the Order No.61 dated 16th August, 2023 passed by the learned Civil Judge (Senior Division), Ghatal, District – Paschim Midnapur in Title Suit No.9 of 2016.
2. By the order impugned, the application of the plaintiffs praying for police help at the time of the commission work to be carried on by the Partition Commissioner stood rejected.
3. Pursuant to the direction of this Court, the copy of this revisional application has been served upon the opposite parties as well as upon the learned Partition Commissioner. The Partition Commissioner is represent in Court by his learned advocate.
4. Learned advocate appearing for the petitioner submits that the opposite party nos.6 to 14 have resisted the Partition Commissioner in the matter of commission work for which

the plaintiffs filed an application for police help. He further submits that the learned Trial Judge ought not to have rejected the prayer for police help on the ground that the plaintiffs have initiated criminal proceedings against the accused persons.

5. Learned advocate appearing for the Partition Commissioner submits that the opposite party nos.6 to 14 have resisted Partition Commissioner in the work of commission.
6. Mr. Mondal, learned advocate appearing for the opposite party no.6, 8 and 9 submits that the opposite parties are not parties in the partition suit but they have been impleaded as parties in this revisional application. He further submits that the said opposite parties are in possession of the suit property by virtue of the order passed by the Special Officer in terms of the provisions of the West Bengal Restoration of Alienated Land Act, 1973. He submits that such order of the Special Officer was challenged by the plaintiffs before the appellate authority, which was dismissed and the plaintiffs carried the matter before this Court by filing a civil revisional application, which also stood dismissed. He, therefore, submits that the order of the Special Officer directing restoration of the land to the said opposite parties is still in force and, therefore, the Partition Commissioner should not be permitted to carry out the work of commission in the land in question. Mr. Mondal further submits that the order for restoration of possession was not subject to any payment to be made.
7. Heard the learned advocates for the parties and perused the materials placed.

8. After going through the plaint of the partition suit being a Title Suit No.9 of 2016, this Court finds that the opposite party nos.6 to 14 were not parties in the said partition suit.
9. On a query of this Court as to why the said opposite parties were not impleaded as parties in this revisional application, the learned advocate appearing for the petitioner submits that since the said opposite parties resisted in the work of commission, they have been impleaded as parties in the civil revisional application. The said opposite party nos.6 to 14 were not parties in the partition suit and, therefore, they are not necessary parties in this revisional application and ought not to have been impleaded in the civil order. However, since Mr. Mandal, the learned advocate of the said opposite parties appeared and submitted that their rights will be affected if any order is passed in this civil order, this Court heard the submissions of Mr. Mandal.
10. Record reveals that the opposite party nos.6 to 14 filed an application under Order 1 Rule 10 of the Code of Civil Procedure in Title Suit No.9 of 2016 for being impleaded as parties in the said suit. The learned Trial Judge by an order dated 30th August, 2016 rejected the prayer for addition of parties with the following observation:-

“It is true that from the copy of the order sheet dt. 28.5.87 passed by Special Officer, W.B.L.R Act, 1973 & J.L.R.O Daspur it appears that Ohad Box made an application Under the provision of the West Bengal Restoration of Alienated Land Act and after allowing his application the Special Officer ordered him to pay the due amount in 4 equal quarterly installments and the first installment was due on Sraon 1394. The petitioners have also filed the copy of the order of S.D&L.R.O. who dismissed the appeal of the plaintiff against the order passed by the Special Officer. But that order was passed in the year

1987 and the same was affirmed by the appellate forum on 23.8.97. It is 1423 B.S. But the petitioners have failed to file any single document to show the payment of consideration amount to the plaintiff as per the direction of the Special Officer. They have also failed to show any document as to their possession in the suit plot."

11. The said order was challenged by the aforesaid opposite parties in C.O. No.4036 of 2016 and a Coordinate Bench by an order dated 10th February, 2017 dismissed the said civil revisional application by observing that the petitioners therein that is the opposite party nos.6 to 14 herein have not been able to substantiate that they have made any payment to the opposite party no.1 therein as directed by the said order dated May 28, 1987 passed by the Special Officer till that date.
12. This Court is bound by the order and observation made by the Co-ordinate Bench in the order passed in C.O. 4036 of 2016. Therefore, this Court cannot go into the issue as to whether the order of Special Officer was subject to any payment being made or not in this application under Article 227 of the Constitution of India.
13. The opposite parties, in spite of their best efforts, could not get themselves impleaded in the suit for partition. The partition suit was decreed *ex parte* in preliminary form by a judgment and decree dated 22nd March, 2018.
14. It appears that by an order dated 20th January, 2020, the learned Trial Judge appointed the Partition Commissioner with a direction upon him to execute the writ in terms of the preliminary decree adhering to the principles of final partition as compactness of allotment and intactness of present possession as far as may be found practicable.
15. In terms of the writ being issued, the Partition Commissioner proceeded to hold the commission work

but was resisted by the opposite party nos.6 to 14 in the matter of commission work. The petitioner herein lodged a complaint before the police authorities against the illegal activities of the said opposite parties. The police authorities are duty bound to take steps on the basis of the complaint lodged before them. That by itself cannot be a ground for rejecting the prayer for police help when the Partition Commissioner faced resistance in the matter of conducting the commission work pursuant to the writ being issued by the learned Trial Judge. When an order was passed directing the Partition Commissioner to hold commission work and while conducting such commission work, the Commissioner was resisted, the learned Trial Judge ought to have passed an order directing the police to render assistance to the Partition Commissioner.

16. For such reason, this Court is inclined to interfere with the order impugned. Accordingly, the order dated 16th August, 2023 passed by the learned Civil Judge (Senior Division), Ghatal, Paschim Medinipur in Title Suit No.9 of 2016 is set aside. The application for police help stands allowed. The Officer-in-Charge, Daspur Police Station is directed to render all assistance to the Partition Commissioner in the work of partition.

17. It will be well open to the Partition Commissioner to approach the Officer-in-Charge of the concerned local police station with a copy of this order and if such an approach is made, the Officer-in-Charge of the concerned local police station shall act in accordance with the order passed by this Court. The Partition Commissioner is requested to conclude the commission work in terms of the order passed by the learned Court below as expeditiously as possible.

18. With this above observation/direction, C.O. 3512 of 2023 stands allowed.
19. There shall be, however, no order as to costs.
20. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)