

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M.A.T. 1840 of 2022
(CAN 2 of 2023)***

***Ashok Kumar Jana @ Ashok Jana
-Vs-
The Contai Municipality & Ors.***

For the Appellant : Mr. Sounak Bhattacharya, Adv.,
Mr. Sounak Mondal, Adv.,
Mr. Abhirup Halder, Adv.

**For the Respondent/
Writ Petitioner** : Mr. Soumen Kr. Dutta, Adv,
Mr. Subham Dutta, Adv.,
Sk. Sayan Uddin, Adv.

Heard on : 04.09.2024

Judgment on : 04.09.2024

Joymalya Bagchi, J. :-

1. Appellant is aggrieved to the extent that his prayer for cancellation of holding No.560/272(A) in favour of the private respondents out of joint holding No.272/521 had not been considered by the Hon'ble Single Judge.
2. Factual matrix giving rise to the issue is as follows:-

3. Appellant and the private respondents viz., Asim Kumar Jana and Ajit Kumar Jana are co-owners of a joint property. By a deed of partition executed in 1970, the shares of the co-owners had been declared but the joint property had not been divided by metes and bounds. In 2007, a joint building plan was sanctioned in favour of the three brothers was issued by the Municipality concerned. A two storied building was constructed on the basis of the said plan on holding No.272/521. Subsequently, a part holding No.560/272(A) was recorded in the name of the private respondent No.5 viz., Asim Kumar Jana and a sanctioned plan was issued in his favour in 2015. By representation dated 11.07.2017, appellant Ashok Kumar Jana prayed for cancellation of part holding 560/272(A) carved out from joint holding 272/521 in favour of private respondent viz., Asim Kumar Jana as well as the plan sanctioned in the latter's favour. No action was taken by the Municipality and the appellant approached this Court in WP 1759 (W) of 2019 seeking direction upon the Municipality concerned to take a decision in the matter. By order dated 22.02.2019, Hon'ble Single Judge directed the Municipality to consider the representation of the appellant after giving an opportunity of hearing to all the parties and take appropriate decision thereon. In spite of such direction, no steps were taken and the appellant again approached this Court in WPA 10068 of 2020 and another Hon'ble Judge directed the Municipality

to decide the matter within a fixed time frame. Thereafter, the Municipality by order dated 09.12.2021 came to a finding that the sanctioned plan had been issued in favour of private respondent viz., Asim Kumar Jana in respect of a separate holding No.560/272(A) without partition between co-owners. The decision was challenged before the Hon'ble Single Judge in the present writ petition and by order dated 16.08.2022, the Hon'ble Judge disposed of the writ petition observing the sanction plan in favour of Asim Kumar Jana had already expired and no fresh sanction plan shall be issued in favour of said Asim Kumar Jana without the property being partitioned by metes and bounds between the co-owners save and except upon amiable settlement between them.

4. Mr. Bhattacharyya for appellant contends the Hon'ble Single Judge failed to consider the prayer to cancel the new holding viz., holding No.560/272(A) carved out of the joint holding 560/272 had not been considered.
5. In reply Mr. Dutta for respondent No.5 Asim Kumar Jana submits in another part of the joint property a separate holding No.512/781 had been carved out in favour of appellant out of the joint holding itself. Similarly, another separate holding being No.457/727 had been carved out in favour of Ajit Kumar Jana of the joint holding.

6. In response Mr. Bhattacharya contends the aforesaid holding is in respect of plot No.903 and has not been assailed by the private respondent.
7. From the rival submissions at the Bar, it appears the joint property of the parties comprised of plot No.906 as well as plot No.903. While in plot No.906, a separate holding has been carved out from the joint holding No.560/272 in favour of the respondent No.5, Asim Kumar Jana, in plot No.903 separate holdings have been carved out in favour of the appellant and another co-owner Ajit Kumar Jana. Municipality had carved out separate holdings in favour of the three co-owners having regard to their respective shares declared in the deed of partition executed in 1970. Declaration of shares of the co-owners in the partition deed determines their proportionate share in the property. Accordingly, their respective shares towards property tax have been assessed and separate holdings been carved out in their favour from the joint holding.
8. We do not find any illegality on the part of the Municipality in this regard. However, grant of sanctioned plan in favour of any one of the co-owners without clear demarcation of the property by metes and bounds is not possible as was rightly held by the Hon'ble Single Judge.

9. In light of the aforesaid discussion, we do not find any reason to interfere with the impugned order.
10. Accordingly, the appeal is dismissed.
11. Consequently, connected application is also dismissed.
12. There shall be no order as to costs.
13. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

as