

28.02.2024
Ct. No. 19
Sl. No.03
Cp

C.O. No. 3693 of 2022
With
CAN 1 of 2023
With
CAN 2 of 2023

Smt. Iti Rani Paik Maity
vs.
Biswanath Biswas & Ors.

Mr. Tarak Nath Halder

... for the petitioner.

Mr. Anirban Mitra
Mr. Amit Halder

.....for the opposite party no. 1.

1. CAN No. 1 of 2023 has been listed today, but the original copy of the same is missing. With the consent of the parties, copy of the same is treated to be as the original and taken up for hearing. This is an application for exemption from substituting the legal heirs of the opposite party no. 5 who died during the pendency of the revisional application.
2. According to the petitioner, the issues involved in the revisional application are between the plaintiff/petitioner and the opposite party no. 1. The opposite party no. 5 did not have any role to play.
3. Under such circumstances, CAN No. 1 of 2023 is allowed.

4. The revisional application arises out of an order dated November 11, 2022, passed by the learned Civil Judge (Senior Division), at Basirhat, North 24 Parganas in Title Suit No. 72 of 2020. By the said order, the learned court had allowed the defendant no. 1/opposite party no. 1 herein to repair the house, the drain and replace the electricity line and water pipeline. Repair of the septic tank and the boundary wall was also allowed.
5. The petitioner/plaintiff has challenged the said order on the following grounds:-
 - a) Schedule of repair had not been mentioned. The direction was vague and inconclusive.
 - b) The learned court allowed an omnibus prayer for repair, without ascertaining whether any actual repair was required or not.
 - c) The said order was passed during the subsistence of an order of status quo.
 - d) That the learned court failed to appreciate that the defendant no. 1, being a policeman, was forcefully trying to change the nature and character of the joint property, which was the subject matter of a suit for partition. Under the garb of repairing, constructions would be made, which would be prejudicial to the interest of the plaintiff, who is a co-sharer.

6. Mr. Mitra, learned advocate appearing on behalf of the defendant no. 1, denies the allegations and submits that the order of status quo would indicate that parties were in possession of their exclusive and respective portions. Thus, any repair work within the portion occupied by the defendant no. 1, would not prejudice the plaintiff.
7. Having heard the contentions of the parties, this court finds that in the application for injunction, there is a specific averment that the defendant no. 1 was trying to encroach into the portion which was being enjoyed by the plaintiff/petitioner. Thus, the question of repairing the boundary wall and the other works, in the absence of any advocate commissioner would not be wise.
8. The defendant no. 1 will approach the learned trial court for appointment of an advocate commissioner. The learned court shall appoint such advocate commissioner for the purpose of the above works. With reference to the boundary wall, if it is found by the learned advocate commissioner that the boundary wall has been damaged and requires repairing, a report shall be filed before the court and the boundary wall will be repaired on the basis of such report, as per direction of the court. If no damage is seen, then the report to that extent will be filed.

9. With regard to requirement of cleaning and repairing of the septic tank, the repairing of the house, repairing and/or replacing of the electricity line and water pipeline, this court directs that the said repairing will be carried out in the area exclusively within the possession of the defendant no. 1, without any interference with the main water line or the drainage system which caters to the house or the area occupied by the petitioner. Such repairing work shall also be conducted in the presence of the learned advocate commissioner to be appointed by the learned court on the prayer of the defendant no. 1 and at his expense.
10. Needless to mention, the entire activity shall be confined to the premises being occupied by the defendant no. 1 and no equity will be claimed in respect of such works. It is also made clear that no new construction will be allowed. Major addition or alteration or reconstruction shall not be permitted. The learned Advocate Commissioner will ensure that the plaintiff's possession, amenities, facilities etc. are not disturbed. The learned Advocate Commissioner will file a report after completion of the works.
11. The order impugned is modified accordingly.
12. If the application for appointment of an advocate commissioner is filed by the defendant no. 1, the same will be disposed of within 10 days by the learned court

and the learned advocate commissioner will be appointed. The learned advocate commissioner will act in terms of this order. The remuneration will be fixed by the court and paid by the defendant No1.

13. The date and time of inspection and repair will be fixed by the learned Advocate Commissioner and both parties will be notified.

14. The revisional application is accordingly disposed of. There shall be no order as to costs.

15. With the disposal of the revisional application, CAN No. 2 of 2023 is also disposed of.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)