

15.12.2025
Ct. No. 06
Sl. No.6
skg

C.O. No. 3559 of 2025

Smt. Aparna Bhowmick (Das)
Vs.
Swapan Kumar Das & Ors.

Mr. Amal Krishna Saha,
Mr. Tapan Sil,
Mr. A. Bhar,

.....for the petitioner

Mr. Gour Baran Sau

....for the opposite party no.1

1. The petitioner has challenged the order dated January 31, 2025 passed by the Addl. District Judge, 3rd Fast Track Court, Malda in Misc. Appeal no. 8 of 2023 and the order dated April 24, 2023 passed by the Civil Judge (Sr. Div.) 1st Court, Malda in T.S. Case no. 233 of 2000.
2. It appears from the order dated April 24, 2023, that the learned Civil Judge, Fast Track Court, Malda had rejected the application under Section 151 of the Civil Procedure Code. By the said application, the petitioner who is the defendant no. 2 in the suit, prayed for restoration of the suit upon recall of the order dated November 30, 2022.
3. It was contended before the court that, when the suit was dismissed for non-prosecution on account of the plaintiff not taking steps and by not filing the answer to the show cause, the defendant no. 2 was not

present, due to the illness of her husband. The petitioner further contended that, although, the commission work was complete the shares of the defendant nos. 1 and 2 had not been demarcated and only the plaintiff's share was allocated. No final decree had been passed. Report has been submitted by the partition commissioner before the learned court. The passing of the final decree was awaited.

4. The learned Court rejected the application on the ground that the petitioner/defendant no.2 failed to show-cause as to why the suit should not be dismissed and the medical reports of the husband who was allegedly under treatment, had not been filed with the application. The court held that as the suit was dismissed under Order 17 Rule 3 of the Code of Civil Procedure, proper recourse should have been taken by preferring an appeal against the order dismissing the suit.
5. On the basis of the said order, the petitioner preferred a miscellaneous appeal which was dismissed as not maintainable. However, while dismissing the appeal on the ground of lack of jurisdiction, the appeal court upheld the order of the learned trial Judge. Thus there appears to be apparent contradictions.
6. First and foremost, this is a partition suit. The suit has been decreed in preliminary form. The shares of the plaintiff and the defendants have been declared

and a partition commissioner was appointed by the court to demarcate the suit property, by carrying out the partition as per the shares declared in the preliminary decree. The plaintiff's share was allotted. The plaintiff failed to take steps thereafter and Mr. Saha submits that, as the plaintiff's allocation had been done by the partition commissioner, the plaintiff lost interest in perusing the suit.

7. The defendant no.2 had already filed an application for demarcation of her allocation which was pending. At that juncture, the suit was dismissed for non-prosecution on the ground that the plaintiff had stop taking interest in the suit. The defendant no.2/petitioner filed an application for recall of the order by which the suit was dismissed for non-prosecution, so that the shares of the defendants could be allocated as per the prior application which was pending. The learned Court refused to restore the suit and rejected the application under Section 151 of the Code of Civil Procedure, on a misconception that the defendant no.2 had been asked to take steps, but had failed to do so. The court was of the view that, the defendant no.2 had been asked to show-cause as to why the suit should not be dismissed for non-prosecution, but the defendant no.2 failed to show cause. Secondly, the Court held that, the explanations for seeking restoration of the suit was acceptable by

the learned court. The defendant no.2 could not produce any document in support of her husband's illness.

8. In my view, the suit should be restored. This is a partition suit. Preliminary decree has been passed. Even if the plaintiff did not take any steps till the passing of the final decree in the partition suit, a defendant can also seek reliefs just like the plaintiff.
9. The order impugned is set aside.
10. The application filed by the defendant no.2/petitioner seeking allocation of the share of the petitioner/defendant No. 2 will be disposed of by the learned court on merits.
11. With the above observation, the revisional application is accordingly allowed. The learned court shall proceed in accordance with law. The orders impugned are set aside.
12. There shall be no order as to costs.
13. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)