

D/L - 12
14.01.2025
Court. No. 5
S.Kundu

C.O. 4419 of 2024

Md. Asananuddin Khan & Ors.
Vs.
Md. Abdul Samad Mondal & Ors.

Mr. Anirban Das,
Mr. Sarbananda Sanyal,
Ms. Pulami Chakraborty

...for the petitioners.

Mr. Subhrajyoti Ghosh,
Mr. Biswajit Chanda

...for the opposite parties.

1. Affidavit of service filed in Court today is taken on record.
2. Challenging *inter alia*, the order passed by the learned Additional District Judge, 1st Court, Barrackpore, North 24 Parganas in Misc. Appeal No. 52 of 2024 dated 5th December, 2024 arising out of an order dated 25th April, 2024 passed by the learned Civil Judge (Junior Division), 1st Court, Barrackpore in Title Suit No. 292 of 2023, whereby the defendants have been restrained from encroaching and changing the nature and character of the suit property, the instant revisional application has been filed.
3. The learned advocate representing the defendants/petitioners by drawing attention of this Court to the family tree of the parties appearing at page 63 of the revisional application would submit that one Hazer Ali

Khan was the original owner of the suit property, who had died leaving behind his four sons and one daughter namely, Nekjan Bibi. The plaintiffs/opposite parties claim interest in the suit property through Nekjan Bibi while the petitioners who are defendants in the suit, claim to be co-sharers in respect of the suit property through Yakub Ali one of the sons of Hazer Ali Khan.

4. Mr. Das, learned advocate appearing in support of the instant revisional application by drawing attention of this Court to the statements made in the plaint and the relief sought for therein would submit that the opposite parties had filed the suit for declaration that they are absolute owners in respect of the suit property by suppressing that the defendants are co-sharers in respect thereof and as such no relief ought to be afforded to the opposite parties. He submits by the order impugned the petitioners have been prevented to cultivate their land
5. It appears that the learned Trial Court by Order No. 9 dated 25th April, 2024 by taking into consideration the documents on record and the written objection filed by the petitioners, wherein the factum of Nekjan Bibi being one of the legal heirs of Hazer Ali had not been denied despite the defendants claim that the said Nekjan Bibi only had a small interest in respect of the suit property by way of inheritance, having noted that both parties have claimed their respective interest in

the suit property on the basis of the documents disclosed including the L.R records of rights which recognises the share of Nekjan Bibi in the said suit plots, in order to preserve the suit property and to protect the interest of the parties had passed an order in the form of *status quo*.

6. Being aggrieved the petitioners had filed a miscellaneous appeal, which was allowed by the order impugned. Perusal of such order would, however, show that the learned Court had allowed the said appeal on contest by modifying the order passed by the learned Civil Judge (Junior Division), 1st Court, Barrackpore in T.S. No. 292 of 2023 on 25th April, 2024 thereby restraining the defendants from illegally encroaching and changing the nature and character of the suit property mentioned in the suit till disposal of the suit.
7. After the learned advocates for the parties having argued the matter for some time, Mr. Ghosh, learned advocate appearing on behalf of the plaintiffs/opposite parties would however volunteer and submit that the opposite parties by taking note of the prevailing circumstances and the fact that they are co-sharers in respect of the suit property have decided and are in the process of taking steps for amending the plaint so as to incorporate a prayer for partition. Taking into consideration the aforesaid stand and noting that the

plaintiffs also acknowledge that the petitioners are co-sharers of the aforesaid property along with the opposite parties/plaintiffs, I am of the view that order of injunction cannot be sustained though appropriate protection should be afforded to the parties for ensuring that the suit property is protected.

8. The aforesaid order is being passed on the expressed undertaking given by the opposite parties through their advocate that appropriate steps shall be taken for effecting partition and for incorporating a prayer for partition of the suit property in accordance with law.
9. In view of the above, the order passed by the learned Additional District Judge, 1st Court, Barrackpore in Miscellaneous Appeal No. 52 of 2024 dated 5th December, 2024 is set aside. The parties shall maintain *status quo* as regards nature, character and possession of the suit property. The same shall, however, not interfere with the rights of the parties to cultivate the land in respect whereof they are in possession.
10. It is made clear that in any event the opposite parties do not take any step for effecting partition of the suit property, within a reasonable period, the petitioners shall be at liberty to apply before the learned Trial Court for appropriate order.
11. Accordingly, the revisional application is disposed of.

12. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance with requisite formalities.

(Raja Basu Chowdhury, J.)