

AD -5
Ct No.16
06.04.2026
(SSS)

FMA 1128 of 2019
With
CAN 1 of 2019 (Old no: CAN 8312 of 2019)

T. K. Bandyopadhyay Construction
Company Private Limited
Vs.
The State of West Bengal and Ors.

Mr. Aniruddha Chatterjee, Snr. Adv.,
Mr. Parikshit Lakhotia
.....For the appellant.

Mr. Tapan Kumar Mukherjee, Snr. Adv.,
Mr. Pinaki Dhole, Adv.
.....For the State.

1. In view of the appeal involving a brief arguable question, the same is admitted on the grounds as taken in the memorandum of appeal.
2. On consent of the parties, the appeal is being taken up for final disposal along with the connected application.
3. The genesis of the present *lis* is a suit, *inter alia*, for declaration and consequential reliefs, filed by the appellant, seeking to establish its title in respect of the suit property. The schedule of the plaint of the suit described a specific demarcated portion with boundaries as the suit property. Before the Trial Court, both parties agreed that a

portion of the larger chunk of property, from which the suit property was later culled out, was acquired by the State and the rest belongs to the present appellant.

4. Accordingly, the learned Trial Judge proceeded to declare the right, title and interest of the plaintiff/appellant over the suit property, with a further direction for the plaintiff/appellant to demarcate its portion.

5. The matter went up in appeal. By the impugned judgment, the First Appellate Court remanded the matter to the Trial Court only on the finding that since the Trial Court had directed demarcation of the property by the plaintiff, the property could not have been said to be already demarcated and the exclusive title of the plaintiff could not be declared in respect thereof, nor could any injunction be granted to protect the possession of the plaintiff with regard to the suit property.

6. On a bare perusal of the judgments of both the Courts below, we find that there is no dispute raised before either of the Courts by the parties to the effect that after acquisition of the rest of the property by the State, the suit property was left to the plaintiff/appellant. Thus, the right, title and

interest of the plaintiff/appellant with regard to the suit property are not disputed.

7. It is also not under dispute that the portion of the plaintiff/appellant was a separate and demarcated portion, which is also evident from the fact that the same has been described with boundaries in the title suit.

8. It is thus evident from the findings of both the Courts that the operative portion of the Trial Court's judgment and decree, where the plaintiff/appellant was permitted to demarcate its portion of the property, referred to physical demarcation, by construction of boundary walls or otherwise, and not to legal demarcation as required under the law.

9. Hence, we do not find any necessity to needlessly remand the matter to the Trial Court to have the same trial *de novo*, which has already reached its conclusion upon the Trial Court coming to its findings on merits. It is all the more so since the Appellate Court did not reverse the Trial Court's findings, which were arrived at on merits on the basis of the evidence on record.

10. In such view of the matter, FMA 1128 of 2019 is allowed, thereby setting aside the impugned judgment and remand order dated June 29, 2019 passed by the learned Additional District Judge,

First Court at Bankura, District – Bankura in Title Appeal No. 13 of 2017 and affirming the judgment and decree dated September 29, 2015 passed by the learned Civil Judge (Junior Division), First Court at Bankura in Title Suit no. 122 of 2008.

11. CAN 1 of 2019 (Old No: CAN 8312 of 2019) is accordingly disposed of.

12. There will be no order as to costs.

13. Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)