
(1998) 02 CAL CK 0043

In the Calcutta High Court

Case No : Civil Revisional Jurisdiction C.O. No. 3279 of 1997

Panchugopal Mondal and Another

APPELLANT

Vs

Kenaram Mondal and Others

RESPONDENT

Date of Decision : 24-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9, Order 39 Rule 7, 115A
Constitution of India, 1950 — Article 227

Citation : (1998) 3 CALLT 341

Hon'ble Judges : Bijitendra Mohan Mitra, J

Bench : Single Bench

Advocate : Mr. Jiban Ratan Chatterjee and Mr. Satyabrata Chakraborty, for the Appellant; Mr. Subhrokamal Mukherjee, Mr. Debasish Roy and Mr. Rabindranath Mahato, for the Respondent

Judgement

B.M. Mitra, J.—The instant application under Article 227 of the Constitution of India is directed against order dated 10.11.97 passed by the 8th Court of Additional District Judge, Alipore in C.R. Case No. 253 of 1996 arising out of a proceeding u/s 115A of the Code of Civil Procedure. By the impugned order, the revisional court has reversed an order passed by the Trial Court rejecting an application for local inspection.

2. Before dealing with the contentious proposals sought to be canvassed by the respective purposes, it is necessary to give a brief background of the facts of the case. Initially, a suit has been filed for declaration of the shares of parties and the suit has been decreed. Against that, an appeal was taken out and the appeal court set aside the said decree and sent the case back on remand to the trial court holding, inter alia, that the said declaration of shares could not be granted. It is salient to mention that the prayers as they were contained in the original pleadings were for alternative reliefs for declaration of respective shares or for partition. The appeal court while sending the case back on remand has set aside the decree holding that the trial court has gone wrong in its appreciation of the framing of the suit and the same will be treated as a partition suit. After

remand , when the texture of the suit underwent a change pursuant to the direction of the appeal court, it became a partition suit and an application under Order 26 rule 9 CPC saw the light of the day. There were certain points for local investigation, The same was initially rejected by the trial court.

Against that, revision was moved u/s 115A CPC in C.R. Case No. 355 of 1996 before the court of the learned District Judge, Alipore. By an order on contested hearing, the said revisional application stood dismissed as a result whereof the application under Order 26 rule 9 CPC could not be sustained. It has been, inter alia, observed in the said proceeding by the revisional forum of co- equal jurisdiction that at that stage it would not be proper to hold local inspection of the suit property inasmuch as the shares of both that parties are not admitted and it is a point of dispute. A reference was made about the observation made by the trial court about its finding that if the plaintiff did not get declaration of title in respect of the land claimed, local inspection if at all performed would be infructuous. The revisional court agreed with the said finding on proposition of law.

This court has been apprised that against the said order another petition has been moved under Article 227 of the Constitution of India but ultimately that was not pressed. As a result of the same, the revisional order in the earlier revision on passed by the learned District Judge at Alipore in C.R. No. 355 of 1996 remained on record on a legal finding that before the shares were declared in the suit for partition, no useful purpose would be served by the local Investigation. It is significant to note in this context that during the said period an application under Order 39 rule 7 was kept pending. It appears that point Nos. 3 and 4 as delineated in the points for inspection to a petition under Order 39 rule 7 are similar to those of point Nos. 7 and 8 of the petition under Order 26 rule 9 CPC. In the impugned revisional order there was a reference about the earlier order but a contrary observation about legal premise has been made in the impugned order that the dispute has cropped up as regards the quantum of land in possession of the contesting parties.

3. Mr. Chatterjee learned Advocate for the petitioners, has assailed the same with force and he has joined issue with regard to the said premise and, according to Mr. Chatterjee. that possession is of germane significance in a suit for partition and it has been further contended that even If it be a suit that it is the entirety of the partible possession of either of the parties, that would have no effect unless the share is declared in terms of title. Before declaration of shares in a preliminary decree, the entire exercise may be an exercise in futility, and the extent of possession of the parties will not decide the fate of the preliminary decree. Mr. Chatterjee has also pointed out that it runs counter to the legal premise as formulated by the revisional court of co-equal jurisdiction which stares on the face of record and the same cannot be up set at a subsequent stage by a succeeding revisional forum of co-equal jurisdiction. There appears to be substantial force in the contention of Mr. Chatterjee. It appears that before

the preliminary decree is drawn up. the entire exercise is by way of a bid to put the cart before the horse. Unless the shares are determined in terms of a preliminary decree, no useful purpose will be served and the same can be done at a proper stage by the Partition Commission before drawing up of the final decree. The stage is premature and also the entire course followed by the revisional forum in the impugned order is by way of an illusory exercise resulting in dragging of the proceeding unnecessarily. This court feels that the revisional forum in the impugned order has gone wrong in taking its attention by pinpointing that the dispute is entered round about the quantum of land in possession but the same is not germane unless the preliminary decree is drawn.

4. Mr. Chatterjee has contended before this court that keeping in abeyance of the petition under Order 39 rule 7 CPC with regard to the common points delineated therein that the alternative application may have an adverse bearing. That point could not be Investigated in greater detail. This court feels that for the proper carriage of the proceeding the revisional court has gone wrong by placement of reliance on a wrong proposition of law and thereby making wide cases thereby resulting in lengthening the longevity of the litigation. For the ends of justice, this court feels that subordinate courts should confine themselves within their limits not to embark Into a speculative channel on compliance of formalities without applying its mind as to whether the basic premise on which the same is founded Is sustainable or not. Accordingly, this court feels this being a proper case and it should be treated as a case where extraordinary jurisdiction of superintendence is required to be Invoked for the ends of justice so that the courts concerned can operative properly. Accordingly, the order under challenge is set aside. The revisional application under Article 227 of the Constitution accordingly succeeds and, as such, the same is allowed.

5. It is made clear that the disposal of this matter is limited only to the controversy relating to petition under Order 39 rule 7 CPC at an interlocutory stage and it has not had the occasion to go into the merits and any observation made here wilt not cloud the question to be decided at the time of hearing of the suit.

6. Application allowed