

**(2013) 09 CAL CK 0127**  
**In the Calcutta High Court**  
**Case No : C.O. No. 920 of 2011**

Shri Deshbandhu Roy

APPELLANT

Vs

Smt. Susama Banerjee and Others

RESPONDENT

---

**Date of Decision :** 25-09-2013

**Acts Referred:**

**Citation :** (2014) 1 CHN 602

**Hon'ble Judges :** Tarun Kumar Gupta, J

**Bench :** Single Bench

**Advocate :** Bhaskar Ghosh and Mr. Samiran Giri, for the Appellant; Sabyasachi Bhattacharyya and Mr. Chandradoy Ray, for the Respondent

**Final Decision :** Disposed Off

---

## Judgement

Tarun Kumar Gupta, J.—This application under Article 227 of the Constitution of India is directed against Order No. 333 dated 29th January, 2011 passed by learned Civil Judge (Senior Division), 3rd Court, Alipore in Misc. Case No. 8 of 1983 arising out of Title Suit No. 2 of 1982. The background facts of the case may be summarized as follows:-

One Bhupati Nath Banerjee filed a partition suit being Title Suit No. 2 of 1982 against Bibhuti Bhusan Banerjee. During pendency of said suit Bhupati Nath Banerjee sold out his share in the suit property to one stranger purchaser Deshbandhu Roy (present petitioner). Bibhuti Bhusan Banerjee filed an application u/s 4 of the Partition Act against Bhupati Nath Banerjee as O.P. 1 and Deshbandhu O.P. No. 2 being Misc. Case No. 8 of 1983. Said Misc. case was disposed of by the learned trial court by an order dated 27.07.1992 allowing the prayer of pre-emption in favour of petitioner Bibhuti with a direction for assessing the value of the suit property through one valuer commissioner. Deshbandhu Roy preferred a revisional application being C.O. No. 120 of 1992 against said order dated 27.07.1992. Said C.O. No. 120 of 1992 was disposed of on 27.09.1996 with a direction to the trial court to determine the valuation of the property after preliminary decree is passed. In terms of said order dated

27.09.1996 of this Court learned trial court disposed of original partition suit (T.S. No. 2 of 1982) by passing preliminary decree declaring Moiete share of petitioner Bibhuti Bhusan Banerjee and of purchaser Deshbandhu by an order dated 20.05.1999. In terms of order dated 27.09.1996 of Justice N.K. Bhattacharjee in a civil revision case fresh valuer commissioner was appointed by learned trial court. Learned trial court accepted the report of valuer commissioner by an order dated 4th of September, 2004. Again purchaser Deshbandhu Roy preferred a revision being C.O. No. 3866 of 2004 challenging said order dated 4th of September, 2004 of learned trial court accepting the report of the valuer commissioner. The High Court while disposing said C.O. 3866 of 2004 affirmed the order of acceptance of the report of valuer commissioner but gave liberty to the purchaser Deshbandhu Roy to examine the valuer in court on the point of valuation report. In terms of said order passed in C.O. 3866 of 2004 the purchaser Deshbandhu Roy cross-examined the valuer commissioner. The matter was posted for argument on various dates and the purchaser Deshbandhu Roy participated in those hearings. However, on 6th of March, 2010 no step was taken by the purchaser and accordingly learned trial court disposed of the old pending Misc. case No. 8 of 1983 by an order dated 6th of March, 2010. Thereafter, the purchaser filed an application u/s 151 of the CPC praying for recalling said ex parte order of pre-emption dated 6th of March, 2010 which was rejected on contest by learned trial court. The purchaser again moved this Court against said order of rejection of his application u/s 151 of the CPC being C.O. No. 1952 of 2010. After contested hearing Hon"ble Justice Jyotirmay Bhattacharya allowed said application by way of setting aside the ex parte order dated 6th of March, 2010 in Misc. case u/s 4 of the Partition Act with a direction to the learned trial court to reconsider said Misc. case u/s 4 of the Partition Act on its own merit after giving opportunity of hearing to both the parties. In terms of order dated 26.08.2010 passed in C.O. 1952 of 2010 learned trial court took up the matter (Misc. Case 8 of 1983) for hearing in presence of both sides and passed the order No. 333 dated 29.01.2011 fixing a future date for hearing on the point of assessing value and appointment of valuer of suit property.

2. Being aggrieved with said order dated 29.01.2011 the present application has been filed by the stranger purchaser.

3. Mr. Bhaskar Ghosh, learned senior counsel appearing for the petitioner third party purchaser, submits that in terms of High Court order dated 26.08.2010 passed in C.O. 1952 of 2010 learned trial court should have taken up the hearing of the Misc. Case u/s 4 of the Partition Act afresh by deciding the question of entitlement of pre-emption by the claimants, but he fixed the matter for hearing regarding assessing the value and appointment of valuer commissioner of the suit property. According to Mr. Ghosh when the revisional court in C.O. No. 1952 of 2010 sent the matter on remand after setting aside the ex parte order of the Misc. Case passed on 6th of March, 2010, the learned trial court should have decided the applicability of Section 4 on merit and then to decide valuation matter.

4. In support of his contention he has referred case laws reported in United Bank of India, Calcutta Vs. Abhijit Tea Co. Pvt. Ltd. and Others, and Radharani Dassi and Another Vs. Angurbala Dassi,

5. Mr. Sabyasachi Bhattacharyya appearing for the O.P.s. being heirs of Bibhuti Bhusan Banerjee (since deceased), on the other hand, submits that in the order dated 26th of August, 2010 passed by the Revisional Court in C.O. No. 1952 of 2010 it was nowhere stated that the Misc. Case u/s 4 of the Partition Act has to be started de novo. According to him, the Revisional Court was pleased to set aside the ex parte order of pre-emption dated 6th of March, 2010 so that the petitioner third party purchaser get an opportunity to participate in the hearing of said proceedings so that that said proceeding is ultimately decided with the participation of both the parties before the learned trial Court. According to Mr. Bhattacharyya, there is no scope of de novo hearing of said Misc. Case u/s 4 of the Partition Act and that it should proceed from the stage before passing ex parte order dated 6th of March, 2010. He further submits that the case laws referred by Mr. Ghosh have no application as those were relating to orders of remand passed by appellate court at the time of disposal of an appeal.

6. I have considered the submissions made by learned counsels of the parties, perused the materials lying in the record, the order impugned dated 29th of January, 2011 vis-?-vis the order of the revisional court dated 26th of August, 2010 passed in C.O. 1952 of 2010.

7. It is apparent from the materials on record that the present petitioner third party purchaser took part in the proceedings of the Misc. Case No. 8 of 1983 u/s 4 of the Partition Act till the date fixed prior to 6th of March, 2010. On 6th of March, 2010 the petitioner third party purchaser did not take any step and accordingly learned trial court after hearing learned counsel for the other side passed the impugned order of pre-emption dated 6th of March, 2010. The petitioner third party purchaser filed an application u/s 151 of the CPC praying for vacating said order dated 6th of March, 2010 and permitting him to participate in said pending Misc. Case u/s 4 of the Partition Act from the stage as it was on 6th of March, 2010 before passing the order on that date. Had said application u/s 151 of the CPC been allowed by the learned trial court, there was no question of filing the revisional application being C.O. No. 1952 of 2010. As such, it is palpable that the petitioner third party purchaser wanted to participate in the Misc. Case u/s 4 of the Partition Act from the stage just prior to passing of the ex parte order of disposal dated 6th of March, 2010. In the order dated 26th of August, 2010 in C.O. No. 1952 of 2010 learned Revisional Court nowhere stated that said order of remand directing learned trial Judge to reconsider the application u/s 4 of the Partition Act on its own merit after giving an opportunity of hearing of both sides did mean de novo hearing wiping out the contested hearing of both the parties till passing the order dated 6th of March, 2010. The order of a court has to be interpreted by reading it as a whole and not just by reading its operating portion or the final portion.

8. The relevant portion of the order dated 26th of August, 2010 in C.O. 1952 of 2010 may be quoted below:

Under such circumstances, this court feels that instead of remitting it back to the learned Trial Judge for re-consideration of the petitioner's said application u/s 151 of the CPC by treating the same as an application under Order 9 Rule 13 of the Code of Civil Procedure, justice will be sub-served if the said ex parte decree is set aside and another opportunity is given to the petitioner to participate in the hearing of the said proceeding so that the said proceeding is ultimately decided with the participation of both the parties before the learned Trial Judge within a reasonable time.

Accordingly, the ex parte order which was passed by the learned Trial Judge on the opposite parties' said application u/s 4 of the Partition Act on 6th of March, 2010, is set aside.

The learned Trial Judge is directed to reconsider the opposite parties' said application u/s 4 of the Partition Act on its own merit after giving an opportunity of hearing to both the parties.

Considering the long pendency of the said proceeding, this court directs the learned Trial Judge to dispose of the said proceeding positively before commencement of the ensuing Puja Vacation of 2010 without granting unnecessary adjournment to any of the parties.

The instant revisional application is, thus, allowed.

The petitioner is directed to make payment of cost of Rs. 5,000/- to the opposite party Nos. 1 to 3 within a week from date.

Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

(Emphasis added)

9. If above referred portion of the order of the Revisional Court is read in the backdrop of the facts of the case, it is clear that learned Revisional Court directed learned trial court to dispose of the pending Misc. Case u/s 4 of the Partition Act after ensuring participation of both the parties after setting aside the ex parte order dated 6th of March, 2010. This, by no means, can be interpreted to be an order of erasing all the contested orders so long passed in said Misc. case u/s 4 of the Partition Act before passing of the ex parte order of disposal dated 6th of March, 2010.

10. The case laws referred by Mr. Ghosh have no application in the facts and circumstances of the present case. In both the referred case laws an order of remand was passed after hearing an appeal. But when a party approaches a revisional court either u/s 115 of the CPC or under Article 227 of the Constitution of India against a particular order then the revisional court will examine as to whether the order impugned was sustainable in law or not. If the revisional court

is of the opinion that the order impugned is not sustainable, he will set aside said order and return the matter to the court concerned for taking steps from the stage before passing of the order impugned. The order of remand passed in revisional application does not mean reviving of the case from its very beginning.

11. From the above discussions it is clear that in terms of order dated 26th of August, 2010 passed in C.O. No. 1952 of 2010 the parties were restored to the position just before passing of the ex parte order dated 6th of March, 2010. As such, there is no scope of going back to any date prior to the stage of hearing fixed on 6th of March, 2010. If that be the position of law, then learned trial court should not fix for hearing on the point of assessing value and appointment of valuer commissioner of suit property as said chapter was already closed. Apart from that said valuation report was also confirmed up to the level of the High Court at an earlier point of time. Accordingly, I am of the opinion that the learned trial court should have fixed the matter for further hearing as it was fixed on 6th of March, 2010 and there was no scope of going further back.

12. Accordingly, the order impugned dated 29.01.2011 is modified to the extent that learned trial court should fix the next date for further hearing for argument as it was fixed on 6th of March, 2010.

13. Considering the unusual long pendency of the proceeding learned trial court is hereby requested to dispose of the Misc. Case at an early date without granting unnecessary adjournments to either side and pre-emptorily before Christmas Vacation of 2013.

14. The revisional application stands disposed of accordingly.

15. However, I pass no order as to costs. Urgent photostat certified copy of this judgment be supplied to the learned counsels of the parties, if applied for.