
(2012) 05 CAL CK 0076
In the Calcutta High Court
Case No : C.O. No. 1152 of 2012

Smt. Nandini Basu Roy

APPELLANT

Vs

Smt. Namita Manna and Another

RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:

Partition Act, 1893 — Section 4

Citation : (2012) 05 CAL CK 0076

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Jiban Ratan Chatterjee and Mr. Soumen Kumar Dutta, for the Appellant; Sanjib Mal and Mr. B. Das, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is directed against the order dated March 16, 2012 passed by the learned Civil Judge (Senior Division), 2nd Court, Contai in Misc. Case No.13 of 2004 (re-numbered as J. Misc. Case No.8 of 2007) arising out of the Title Suit No.81 of 2003. The plaintiff / petitioner herein is one of the daughters of Late Deb Kumar Shasmal who was the owner of the suit property as described in the schedule of the plaint. Deb Kumar Shasmal transferred some of his properties in favour of his son, proforma opposite party no. 2 by several deeds of gift. After death of Deb Kumar, the petitioner inherited 1/4th share in the suit property. The opposite party no. 1 purchased 1/4th share of dwelling house in suit from Shyamali Mukherjee, another married daughter of deceased Deb Kumar. She is a completely stranger purchaser of the portion of undivided dwelling house of the petitioner and the opposite party no. 2. The petitioner and her husband have been residing at the suit premises all along.

2. The opposite party no. 1 filed a title suit being Title Suit No.81 of 2003 before the learned Judge for declaration, partition and other reliefs and in that suit, the opposite party no. 1 got a preliminary decree declaring 1/4th share in the suit property. After passing of the preliminary decree, the petitioner filed an

application for pre-emption of the 1/4th share of the opposite party no. 1 in the suit property and that application was allowed by disposal of a misc. case wherein it had been decided that the petitioner might pre-empt the suit property at the consideration money to be determined by the parties amicably in default, a valuer should be appointed to determine the valuation of the suit property and thereafter, the suit property would be sold to the petitioner at the valuation so arrived at by the valuer. Since, both the parties had failed to arrive at the valuation amicably, a valuer was appointed and the report filed by him was then challenged. The valuer was then directed to reassess the value and the valuer submitted a report after reassessment of the valuation in consultation with the Office of the Collector. After taking such measures, the valuer submitted his report which is under challenge before this Hon"ble Court.

3. Upon hearing the learned counsel for the parties and on going through the materials on record, I find that the above facts are not in dispute. The valuer submitted his report passed and on being dissatisfied with the said valuation by the petitioner, an application was filed for reassess the valuation and accordingly, the valuation had been assessed at Rs. 38,23,275/- as on or before March 16, 2004.

4. It may be mentioned here that the application u/s 4 of the Partition Act was filed on March 16, 2004 and the valuer was directed to ascertain the market value of the suit property as on the date of filing of the application u/s 4 of the Partition Act, i.e., on March 16, 2004.

5. Mr. Jiban Ratan Chatterjee, learned Senior Advocate appearing on behalf of the petitioner has contended that the valuation had not been done in accordance with law and the valuation was not determined on the basis of the valuation that prevailed in the year 2006 when the order for valuation was directed.

6. Mr. Chatterjee has also contended that the valuer did not ask the parties to file deeds to show the valuation of the lands in the locality.

7. With due respect to Mr. Chatterjee, I am of the view that such submission cannot be accepted.

8. The valuer was appointed for compliance of the order dated November 9, 2011 passed in C.O. No.2825 of 2007. The valuer was directed to ascertain the market value of the suit property as on the date of filing of the application u/s 4 of the Partition Act, that is, on March 16, 2004. For convenience, the relevant portion of the order is quoted below:-

"The valuer is directed to ascertain the market value of the subjected property as on the date of filing of an application u/s 4 of the Partition Act, i.e., on 16.03.2004, the said valuer shall take into consideration all relevant deeds as comparable sale deeds and shall also record the reason of discarding the other deeds at the time of ascertaining the valuation. The parties are also at liberty to produce the sale deeds at the time of ascertainment of the market value before

the valuer and the valuer shall consider the same and shall record the reason thereupon."

9. The valuer submitted his report and as per record, inspection of the suit property was held by the valuer in presence of both the parties. But, the parties failed to produce the deeds in support of the respective contentions on the valuation.

10. It may be noted herein that while ascertaining the valuation, the valuer has given reasons in details and he has taken into consideration the depreciation value of the building being an old one. On consideration of the depreciation value as noted in the report, I do not find that the valuer has committed any mistake in the matter of assessment of the valuation. He is an expert in the field having requisite qualification for assessment of the valuation. The valuer has recorded that in order to ascertain the valuation of the suit property, he searched at the local Additional District Sub-Registrar Office, Contai to collect the sale data. Only a few number of sales on the subjected class of land (commercial plots) was available. The said certified copies of the deeds were duly taken into consideration. The old deeds were considered after allowing the principle for assessment of the valuation to elevate the rate on or before March 16, 2004 for general rise of market value of land per year at simple rate. Thus, I find that the valuer has adopted a scientific recourse to determine the valuation as per order of the Court. I do not find any illegality or material irregularity in the matter of assessment of the valuation.

11. Accordingly, I am of the view that this application is totally devoid of merits. The application is, therefore, dismissed.

12. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.