

(2010) 07 CAL CK 0047
In the Calcutta High Court
Case No : C.O. No. 3439 of 2005

Sri Probodh Chandra Banerjee and Others	APPELLANT
Vs	
Smt. Sabita Mukherjee and Others	RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 07 CAL CK 0047

Hon'ble Judges : Tarun Kumar Gupta, J

Bench : Single Bench

Advocate : Asish Bagchi, for the Appellant; Dilip Mondal and Sandip Roy Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Kumar Gupta, J.—This revisional application under Article 227 of the Constitution of India is directed against the order No. 153 dated April 26, 2005 passed by Shri O.S. Rahaman learned Civil Judge (Senior Division), 7th Court, Alipore, in Title Suit No. 143 of 1989 wherein learned Court was pleased to reject the report filed by learned Commissioner of partition on 10th of July, 2000.

2. Being aggrieved and dissatisfied with the impugned order dated 26th April, 2005 the original defendant Nos. 4 and 6 to 9 filed this revisional application against original plaintiff and other defendants of the suit. During pendency of this revisional application some of the parties died resulting substitution of their legal heirs.

3. It is a case of the present petitioners that at the instance of O.P. No. 1 plaintiff the said Partition Suit being Title Appeal No. 143 of 1989 was initiated resulting passing of a preliminary decree on ascertaining shares of the respective parties and that by order No. 45 dated 22.09.1997 a Partition Commissioner Shri Gour Mohan Show was appointed and that the said Partition Commissioner submitted his report dated 10th of July 2000 and that opposite parties 4 to 6 (defendant 3

series) and plaintiff No. 1 filed their separate written objections against the said report of learned Partition Commissioner and that the present petitioners filed written objection against those objections and that after contesting hearing learned Trial Court was pleased to reject the said report of learned Partition Commissioner without any just cause and the impugned order suffers from material irregularity and the learned Trial Court failed to exercise jurisdiction so vested in him by law and accordingly the present revisional application under Article 227 of the Constitution of India has been filed praying for setting aside the impugned order dated 26th April, 2005.

4. Admittedly, learned Trial Court passed a preliminary decree of partition vide judgment dated 27th May, 1993 and that a survey passed Partition Commissioner was appointed vide order dated 22nd of September, 1997 and that learned Partition Commissioner submitted his report on 10th of July, 2000.

5. During hearing learned Advocate for the present petitioners being defendant No. 4 and 6 to 9 has submitted that the learned Trial Court rejected the entire report of learned Partition Commissioner without going into merit and simply observing that the learned Partition Commissioner illegally made allotment of self-acquired properties of defendant No. 5 arbitrarily and without any basis in favour of defendant No. 4 and 6 to 9 and that learned Partition Commissioner in his evidence specifically stated that he ascertained the possession of the parties by sitting in room No. 4 at Alipur Bar Association and not at the locale and that there were many other anomalies in the report. He has further submitted that learned Trial Court did not specify those anomalies in his order for giving proper justification for rejection of the said report of learned Partition Commissioner.

6. Mr. Dilip Mondal assisted by Mr. Sandip Roy Choudhury learned Advocates for O.P.s on the other hand has submitted that learned Partition Commissioner illegally and without any authority allotted the self-acquired properties of defendant No. 5 to some of the defendants and showed the same in the sketch map though there was no evidence that he actually perused the purchase deed of defendant No. 5 or made any survey relating to the same. He has further submitted that learned Partition Commissioner made allotment of portions to the parties according to his whims without any basis and without considering the convenience of the respective parties. He has further submitted that during evidence learned Partition Commissioner admitted that he did not peruse the purchase deed of defendant No. 5 and accordingly inclusion of the same in the sketch map prepared by him was without any basis. According to him learned Partition Commissioner acted beyond the scope of writ issued in his favour in terms of the preliminary decree of partition and that learned Trial Court was justified in rejecting the same.

7. Admittedly, High Court's power of revision under Article 227 of the Constitution of India is restricted to interference in cases of grave dereliction of duty/flagrant violation of law and should be exercised most sparingly in cases where grave injustice would be done but for interference by High Court.

8. In the case in hand it is palpable from the report of learned Partition Commissioner as well as certified copy of his evidence as produced during hearing that he acted beyond the scope of writ issued to him and that he illegally included the self-acquired property of defendant No. 5 since deceased in the sketch map without any authority. There is also nothing to show that learned Partition Commissioner made proper survey of the property and made proper allocation of areas to the respective parties. It is true that the learned Partition Commissioner visited the locale on several dates and later on prepared the report but his report as I have already stated exceeded the scope of writ issued in his favour in terms of the preliminary decree of partition.

9. Under the facts and circumstances it cannot be said that the learned Trial Court caused any material irregularity by passing the impugned order by way of rejection of report of learned Partition Commissioner. Accordingly, I am of the opinion that the impugned order dated 26th April, 2005 of the learned Trial Court does not call for any interference by this Court of revision by exercising powers under Article 227 of the Constitution of India. As a result, C.O.3439 of 2005 stand dismissed on contest but without cost.

10. Urgent xerox certified copy be supplied to the learned Counsels of the parties, if applied for.