

Sukumar Bhattacharyya Vs. Pran Kumar Bhattacharyya and ors.

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Court : Kolkata

Decided On : Jan-25-2012

Judge : I. P. Mukerji

Appellant : Sukumar Bhattacharyya

Respondent : Pran Kumar Bhattacharyya and ors.

Judgement :

GA No.2719 of 2009 CS No.3 of 2005 IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction ORIGINAL SIDE IN THE MATTER
OF:SUKUMAR BHATTACHARYYA Versus PRAN KUMAR BHATTACHARYYA &
ORS.BEFORE: The Hon'ble JUSTICE I.P.MUKERJ.Date :

25. h January, 2012.

Appearance:Mr.Amitava Das, Advocate with Mr.P.C.Paul Chowdhury,
Advocate..for plaintiff.

Mr.U.P.Mukherjee, Advocate with Mr.J.Mondal, Advocate..for Defendant No.2(a)
to 2(c).Mr.C.K.Saha, Advocate, Mr.Subrata Bhattacharyya, Advocate with
Mr.S.Maiti, Advocate..for defendant no.1.

The Court:-This is an application by the plaintiff in a Partition and Administration
Suit.

He seeks enforcement of a consent decree of partition, which was passed by this Court on 19th December, 2007 according to a Terms of Settlement duly signed by the parties and their Advocates-on-record.

By parties I mean co-owners of the properties, which were the subject matter of the consent decree.

By this consent decree each of the properties was divided into three lots.

Three properties are the subject matter of this application.

They are the properties situated at Rafi Ahmed Kidwai Road, Kolkata, Kurseong and Ghoom in Darjeeling district.

Mr.Saha appearing for the fiRs.defendant opposes this application.

Mr.Das, moving this application is supported by the second defendant group.

It appears from the records that being aggrieved by the consent decree the fiRs.defendant preferred an appeal before a Division Bench of our Court.

The appeal is pending.

It appears from the submissions made before me that the appeal is only with regard to a part of the decree, that is the Rafi Ahmed Kidwai Road property in Kolkata.

The Hon ble Appeal Court has from time to time passed various orders in that appeal.

Because of pendency of that appeal, Mr.Saha submits, this application cannot be entertained.

In this application, the plaintiff asks for division of the Kurseong and Ghoom properties and execution of conveyance in favour of the plaintiff.

Mr.Saha makes the following submissions.

Unless the appeal is decided, the decree does not become final and executable.

He has also shown me certain orders of this Court where this Court restrained the Collector from parting with the original decree.

He submits that such order was passed so that the plaintiff could not obtain a certified copy of the decree and execute it.

Since the decree has not been assessed to stamp duty, according to Mr.Saha, the decree is incomplete and cannot be executed.

not I come to my findings.

I have gone through the Terms of Settlement on the basis of which the consent decree was passed.

Even assuming that there is some dispute regarding the Rafi Ahmed Kidwai Road property, in my opinion, the other properties are very easily severable from the Rafi Ahmed Kidwai Road property and can be partitioned.

I also find that each of the above three properties has been allotted to all the parties in lots.

So it cannot be said by the fiRs.defendant that if a part of the decree regarding Kurseong and Ghoom properties is executed, the plaintiff or the second defendant would get more than what he would get.

I am satisfied in that respect.

Therefore, part execution is permissible of these two properties.

not comes the technical objection regarding execution.

It is true that in the absence of a certified copy of the decree this Court is unable to execute the decree in the formal sense.

But regard must be had to the facts.

An appeal is pending.

There is no stay of the decree.

Yet due to pendency of the appeal and orders of this Court the Collector could not make over the original decree.

Therefore, a certified copy of the decree cannot be issued.

Should the plaintiff on the basis of his above case remain without remedy?.

My answer is not Equity should come to the rescue of the plaintiff.

If the conveyance cannot be executed in favour of the plaintiff and the second defendant group in formal execution of the decree, because of the above legal difficulties, equity would favour their being put in possession of these two properties immediately in terms of the consent decree.

Therefore, I dispose of this application by appointing MRS.Sharmistha Bhattacharya, Advocate Bar Association and Ex Sr.Central Government Advocate as Special Officer at a remuneration of 1500 Gms to be shared equally by the plaintiff and the second defendant group.

The Special Officer will draw up a plan to indicate the construction, alteration work etc.to be made to effect partition of the two properties according to the consent decree and the estimate therefor.

She will immediately take symbolic possession of the two properties at Kurseong and Ghoom.

Such exercise should be completed within two months from date.

I clarify that the Special Officer will be guided by the plan appended to the consent decree.

She will file a report in this Court within ten weeks from date.

On the basis of this report any party may make an application to this Court for execution of the plan and for handing over possession.

The Special Officer will furnish copies of the report to all the parties.

Liberty is granted to the plaintiff to pray for any relief not granted in this application.

All parties concerned are to act on a signed photocopy of this order on the usual undertakings.

(I.

nm P.

MUKERJI, J.)

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