

Ranajit Midya Vs. Rabindranath Midya and Others

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Court : Kolkata

Decided On : Sep-05-2012

Judge : Prasenjit Mandal

Appeal No. : C.O. No. 2302 of 2011

Appellant : Ranajit Midya

Respondent : Rabindranath Midya and Others

Judgement :

Prasenjit Mandal, J.

This application is at the instance of the defendant No.1 and is directed against the Order No.47 dated May 20, 2011 passed by the learned Civil Judge (Junior Division), Additional Court, Ghatal in Title Suit No.27 of 2010 thereby rejecting an application for local investigation on contests.

The plaintiffs/opposite parties herein instituted a suit being Title Suit No.27 of 2010 for declaration of their share in respect of some of the suit properties and separate possession, possession in respect of some other properties upon declaration of their title, declaration that the defendants have no right, title and interest in respect of 'Ka', 'Kha' and 'Ga' schedule suit properties and for permanent injunction restraining the defendants from dispossessing the plaintiffs from 'Ka', 'Ka-1', 'Kha' and 'Ga' schedule suit properties and other reliefs.

The defendants are contesting the said suit by filing a written statement denying the material allegations raised in the plaint. It is their specific contention that a registered Deed of Settlement was held earlier and in fact, it was not a Deed of Partition by metes and bounds and the areas of the lands allowed to the parties had not been properly demarcated and in that registered Deed of Settlement, a rough sketch map had been annexed to the Deed wherein the Plot No.809 to the extent of 16.5 decimals of property was also a subject-matter of the suit. Out of such 16.5 decimals of land, 2 decimals of land was a 'Doba' (pond) and the rest 14.5 decimals of land were obtained by defendant No.s 2 to 5 and their mother jointly. The rest 2 decimals of land were allotted to the plaintiffs. Now, they have contended that those two decimals of lands are no more of 'Doba' and as such, local investigation is necessary.

Upon due consideration of the submissions of the learned Advocates of both the sides, that application filed by the defendants was rejected on contests without costs. Being aggrieved, the defendant No.1 has preferred this application.

Now, the question is whether the impugned order should be sustained.

Upon hearing the learned Counsel for the parties and on going through the materials-on-record, I find that the suit as framed is for declaration of title, recovery of possession and permanent injunction but in fact, the suit is in the nature of partition and recovery of possession in respect of some of the properties, declaration of title and possession in respect of some other properties and also for other kinds of declaration in respect of some properties and for other reliefs. In the suit of this nature, when the declaration of share of the plaintiffs and separate possession have been prayed for, the suit is of the nature of partition in respect of those properties over which such type of declarations have been sought for. In a suit of this nature, appropriate decree for partition can well be passed in respect of some properties and also for declaration, possession, permanent injunction in respect of other properties as prayed for. When there are several prayers in a suit of this nature, the suit is likely to be treated as one for partition also in respect of the properties over which declaration of share and recovery of possession have been sought for.

In that case, a preliminary decree for partition is to be passed in respect of some of the suit properties. Thereafter, if the parties fail to make an amicable partition, final decree for partition may be passed by appointment of a Survey passed Commissioner. So, before taking such a recourse, the Court is to pass a preliminary decree declaring shares of the parties in respect of the suit properties and to give enough time to make amicable partition, if possible. When such a situation arises before passing a preliminary decree for partition in respect of some properties, the local investigation as sought for, I am of the view, is not necessary at all.

While disposing the application for local investigation, the learned Trial Judge has observed that the properties in suit had already been specifically demarcated between the parties in the Deed of Settlement and specific shares had been allotted to the parties in the said Deed of Settlement. The defendants have also admitted such fact by filing the written statement. Before passing any preliminary decree for partition, if necessary at all, the question whether the portion allotted to the plaintiffs measuring 2 decimals of land out of 16.5 decimals of land in Plot No.809 has become doba (pond) is redundant and as such, I am of the view that the local investigation as prayed for in the application appearing as Annexure 'P-1' at Page No.10 is not, at all, necessary. So, without holding any local investigation, the matter in dispute could well be adjudicated in due course of time.

Accordingly, I am of the view that the learned Trial Judge has rightly rejected the prayer for local investigation as sought for by the defendant/petitioner.

There is no scope of interference with the impugned order.

The application is, therefore, dismissed.

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.

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