

(2025) 01 CAL CK 0044

Calcutta High Court (Appellate Side)

Case No: F.M.A. 856 Of 2023 With I.A. No. CAN 1 Of 2023

Samarendranath Pradhan @
Samrat Pradhan

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision: Jan. 15, 2025

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 107, 145

Hon'ble Judges: T.S. Sivagnanam, CJ; Hiranmay Bhattacharyya, J

Bench: Division Bench

Advocate: Pawan Kumar Gupta, Syed Julfikar Ali, Sofia Nesar, Santanu Sett

Final Decision: Disposed Of

Judgement

T.S. Sivagnanam, C.J.

1. This intra-Court appeal by the writ petitioner in W.P.A. 15293 of 2023 is directed against the order dated 3rd August, 2023, by which the writ petition was disposed of with certain observations.

2. The learned advocate for the appellant would vehemently contend that the appellant is the rightful owner of the property and he has constructed a house and the private respondent has illegally put up a tin fence when the appellant was already in peaceful possession of the land and the house in the said property.

3. The learned Single Bench had noted that the police have already initiated action under Section 107 of the Code of Criminal Procedure and the Executive Magistrate has initiated action under Section 145 of the Code of Criminal Procedure and an order has also been passed.

4. As the prayer sought for in the writ petition is to direct the police authorities to remove the fencing, which according to the appellant, is blocking the passage and entrance to his house, such prayer cannot be granted in a writ petition, more particularly, when the matter concerns a right to an immovable property, which is essentially civil in nature.

5. The apprehension of the appellant is that the findings rendered in the proceedings drawn under Section 145 of the Code of Criminal Procedure would affect the appellant's right. As we have observed that the matter is essentially and substantially civil in nature, if and when the appellant files a suit before the civil court having jurisdiction, the matter will be decided by the civil court uninfluenced by any of the observations made by the Executive Magistrate in a proceeding drawn under Section 145 of the Code of Criminal Procedure as the said proceeding is not akin to a decision that can be arrived at by the Civil Court.

6. Therefore, we dispose of this appeal along with the application (IA No. CAN 1 of 2023) with the observation that it will be well-open to the appellant to file a civil suit seeking necessary relief and if and when such civil suit is filed, it is needless to state that the Civil Court will decide the matter based on the oral and documentary evidence, which is placed before the Court and shall be uninfluenced in any manner by any observation made by the Executive Magistrate in the proceeding drawn under Section 145 of the Code of Criminal Procedure or with regard to any finding rendered by the police in the proceedings under Section 107 of the Code of Criminal Procedure.

7. The learned advocate for the appellant submitted that all the belongings of the appellant and documents are lying inside the house, which has now been fenced and seeks appropriate direction to enable him to remove the documents and articles from the house.

8. Any positive direction in this regard would tantamount to rendering a finding as to who is in actual physical possession in the property concerned. Therefore, we give liberty to the appellant to approach the competent authority with such a prayer and if such application is filed, the said competent authority after notice to the private respondent shall issue appropriate directions.

9. No costs.

10. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.