Biswanath Dhara Vs Mritunjoy Dhara And Others

Court: Calcutta High Court

Date of Decision: Jan. 4, 2000

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 115
Constitution of India, 1950 â€" Article 227

Citation: 104 CWN 502

Hon'ble Judges: Bhaskar Bhattacharya, J

Bench: Single Bench

Advocate: Sukumar Bhattacharjee, for the Appellant;J. R. Chatterjee, for the Respondent

Judgement

Bhaskar Bhattacharya, J.
This revisional application under Article 227 of the Constitution of India is at the instance of a defendant in a suit

for partition and is directed against Order No. 3 dated July 15, 1999 passed by the learned District Judge. Howrah in C.R. No. 112 of 1999

thereby affirming Order No. 103 dated May 25, 1999 passed by the learned Civil Judge, Junior Division, 7th Court, Howrah in title Suit No. 41

of 1989. A partition suit valued at Rs: 14,000/- was decreed in preliminary form and no appeal has been taken by either of the parties against such

preliminary decree.

2. Pursuant to the application for final decree, an Advocate Commissioner was appointed. The said Commissioner submitted a report thereby

assessing the valuation at Rs. 38,388.88 paise. Although neither of the parties disputed the aforesaid valuation assessed by the Advocate

Commissioner, the learned Judge by Order No. 102 dated April, 1, 1999 opined that the pecuniary jurisdiction of the Court being limited to Rs.

15.000/-, the matter is required to be clarified and ultimately by Order No. 103 dated May 25, 1999 decided to send the matter to Collector.

Howrah for ascertaining the actual valuation of the property.

3. Being dissatified, the present petitioner preferred a revisional application u/s 115A of the CPC before the learned District Judge and by the

Order No. 3 dated July 15, 1999 which is the subject matter of the instant revisional application, the learned District Judge affirmed the said order

passed by the learned trial Judge with observation that the valuation assessed by the Advocate Commissioner cannot be taken as final. According

to him, in order to determine the correct valuation, a report may be reasonably obtained from the Collector concerned so that the parties may not

deprive the state of the actual court fees payable.

4. Being dissatisfied, the defendant has come up in revision.

5. Mr. Bhattacharya, the learned advocate appearing on behalf of the petitioner contends that since the suit was valued at Rs. 14,000/- and the

preliminary decree has already been passed without any objection as regards valuation, even if the Commissioner assesses the valuation of the

property as above Rs. 15,000/-. the learned trial Judge would still be competent to pass final decree. Therefore. Mr. Bhattacharya. submits, there

was no necessity of sending the matter to the Collector.

6. Mr. Chatterjee, the learned advocate appearing for the opposite parties has supported the contention of Mr. Bhattacharya.

7. In my view, once a suit for partition is decreed in preliminary form, the court is not competent to set aside the preliminary decree and return the

plaint to the learned advocate for the plaintiff for presentation before appropriate court even if it discovers at the final decree stage that the suit was

initially undervalued. [See Ratikanta Moyre vs. Sanatan Baidhya & Ors., reported in AIR 1930 Cal page 147 (D.B.))

8. Therefore, I agree with the learned counsels for the parties that for the purpose of ascertaining whether the court had pecuniary jurisdiction over

the subject matter of the suit, there was no necessity of sending the matter to the Collector because there was no scope of such further

investigation, the suit having already been decreed in preliminary form.

9. But this court cannot lose sight of the fact that a final decree effecting a partition is an Instrument of Partition as defined in Section 2(15) of the

Indian Stamp Act and according to Article 45 of Schedule 1A therefore which is applicable to West Bengal, the stamp duty payable on such

document should be the same duty payable on a Bond (Article No. 15) for the amount or the value of the separated share or shares of the

property subject to the note given in that Article.

10. There is no dispute with the proposition of law that a final decree in a partition suit should be engrossed on the requisite stamp paper and until

that is done and the Judge signs the decree so engrossed, the suit does not terminate nor does the legal title accrue in favour of the allottees.

11. Therefore if the learned Judge is in doubt about the valuation of share mentioned in the Commissioner''s report, he is entitled to seek the

opinion of the Collector in terms of Section 31 of the Indian Stamp Act. For the purpose of calling for such an opinion it is not necessary that the

deed in question must be an ""executed deed"". Even before actual execution, the opinion of the Collector may be sought.

12. Thus, although the learned revisional court below while affirming the order of the learned trial Judge wrongly mentioned about the payment of

Court fees"", in my opinion, there is no bar in referring the matter to the Collector for ascertaining the actual ""stamp duty"" payable on the final

decree.

13. I therefore modify the orders impugned to this extent that although the learned trial Judge is not competent to reassess the question of

pecuniary jurisdiction after passing of preliminary decree, he can. if he is of the opinion that a reference should be made to the Collector in terms of

Section 31 of the Stamp Act, make appropriate reference after complying with the formalities provided in the said section.

14. The matter is therefore remanded to the learned trial Judge for considering the matter afresh in the light of the aforesaid observation. Revisional

application is thus disposed of. No costs. S.B.M.