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19.11.2020.
b.d/d.p.

**C.O. 1333 of 2020
(Via Video Conference)**

**Mritunjoy Acharya
-vs-
Janamejoy Acharya**

**Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal.
...For the Petitioner.**

The petitioner is the plaintiff in a title suit filed by the petitioner against the opposite party for partition of a property.

Learned counsel appearing for the petitioner has challenged an order passed by the Learned Civil Judge, Senior Division, Kandi, Murshidabad dated 23rd September, 2020 by which an application filed by the opposite party/defendant under Section 151 of the Code of Civil Procedure, 1908, was allowed. Counsel submits that in allowing such application, the defendant was also permitted to construct a dwelling house on a plot of land but that the impugned order does not specify any particulars as to where such construction shall take place.

On perusing the impugned order, it is found that the only reason given by the learned Court below is that "*Humans cannot live without their house*". The effect of allowing the application filed by the defendant is substantial namely that the defendant has been given to go-ahead of constructing a dwelling house. There is no other reason indicated in the impugned order for allowing the prayer. The order does not disclose any particulars as to where such dwelling house is to be

constructed as well as the nature of the dwelling house. It is also curious that the defendant had been directed to demolish the house if the petitioner and the other co-sharers are adjudged a rightful owners of the same at the time of partition.

In view of the above, this Court deems it fit to set aside the order dated 23rd September, 2020 by the Learned Civil Judge, Senior Division, Kandi, Murshidabad.

The petitioner is directed to serve a copy of this order on the opposite party within 48 hours.

C.O. 1333 of 2020 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)