

24.12.2020
SL No.8
Court No.12
(gc)

**FMAT 570 of 2020
With
CAN 1 of 2020**

**Nilkamal Pal
Vs.
Bijan Kumar Guin & Ors.**

(Via Video Conference)

Mr. Tapash Kr. Bhattacharya,
Mr. Avirup Bhattacharya,
...for the plaintiff/appellant.
Mr. Sabyasachi Mukhopadhyay,
Ms. Koushikee Banerjee,
...for the defendants/respondents.

The appeal is arising out of an order passed by the learned Civil Judge (Sr. Divn.), Katwa in connection with an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure in Title Suit No.121 of 2020.

The application for injunction was filed in a suit for partition. The plaintiff/appellant alleged that he has purchased undivided share in the property in question from one of the original owners, namely, Dilip Kr. Biswas and thereafter raised construction over a portion of the property which was handed over to him pursuant to the deed of conveyance executed by Dilip Kr. Biswas in his favour. The defendants are the co-sharers of the suit property. It is alleged that the defendants have now tried to raise their dwelling house over the land that belongs to them. One elementary principle that governs the rights of co-owners and co-sharers in the property is that every co-owner has a right over every inch in the suit property unless there is a

declaration of shares and the properties are divided by metes and bounds or on the basis of an agreement arrived at between the parties in the partition proceeding. In the instant case, it appears that the plaintiff/appellant also claims to be a co-owner and co-sharer of the property in question but he had raised a construction of two-storied building in the suit property and now is raising objection with regard to the construction the defendants/respondents proposed to make in the portion under their occupation. The defendants/respondents before the Trial Court as well as before the Appellate Court had to say that the earlier partition suit was a compromise decree between the parties and thereafter the defendants/respondents are in possession of a demarcated portion of the suit property and for their enjoyment they had raised construction which is not yet completed and in an attempt to throw a spanner in the wheel this partition suit has been filed motivatedly. The defendants have also alleged that the construction of the plaintiff is unauthorized as there is no sanction plan. In the same vein, the plaintiff contends before us that the defendants' constructions are also unauthorized.

On such conspectus and keeping in mind the equities, we feel that the learned Trial Judge was justified in permitting the defendants to complete the construction as the plaintiff has already constructed in their portion and in enjoyment of the said constructed portion.

It is, however, needless to mention that the prayer made by the parties under the suit premises, shall abide by the result of the partition suit. Any construction made by either of the parties in the suit property shall not create any equity in their favour during the pendency of the proceeding. Whether the portion of owelty would be the best mode or any other means to be adopted at the final stage of the partition proceeding are for the Court to decide at the appropriate stage and we do not wish to make any comment in that regard.

Under such circumstances, we modify the order passed by the learned Trial Judge only to the extent that the construction made by the parties in the suit property shall not create any equity in their favour and subject to the result of the partition suit as well as the application filed by the plaintiff under Order 39 Rule 7 of the Code of Civil Procedure. We expect parties not to make any construction that may interfere with the ingress and egress of the parties to their respective dwelling houses.

The appeal being FMAT 570 of 2020 along with application being CAN 1 of 2020 are, accordingly, disposed of.

All parties are to act on a website copy of this order on the usual undertaking.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)