

**JAHANARA BEGAM VS. SAIFA BEGAM &
ORS.**

**Mr. Biswanath Mitra
Ms. Aparupa Bhattacharya
Mr. Rudra Prosad Sinha
 ..for the petitioner
Mr. Kumar Jyoti Tewari
Mr. Yunus Mondal
Ms. Rajlaksmi Ghatak
 ..for the opposite party no.1**

This revisional application has been filed challenging an order dated March 2, 2020 passed by the learned Civil Judge, Senior Division, Kandi, District Murshidabad in P.S. Case No. 217 of 2014. The suit is for partition. The petitioner filed the suit. The defendant no.1 applied before the learned Court below under Section 151 of the Code of Civil Procedure seeking permission to construct a residential house in the undivided portion of the suit property in his possession.

It is the contention of the opposite party that the plaintiff initially filed a partition suit, which was dismissed. Thereafter, the defendant no. 1 as one of the co-sharers of the undivided property gathered materials on the suit property for construction. The subsequent suit was filed and an order of status quo was passed. The construction

could not continue. A learned Commissioner was appointed by the learned court and the learned Commissioner also filed a report before the learned Court below which corroborated the fact that the building materials were lying and construction of unfinished house was standing on the portion of the undivided property. Accordingly, the defendant no. 1 filed an application seeking permission for construction of the dwelling house. The defendant no.1 filed an undertaking that no equity would be claimed with regard to the construction and the defendant no.1 would be liable to demolish the said structure, in case the structure fell within the share allotted to the plaintiff at the time of drawing up the final decree. The learned Court below by the order impugned allowed such prayer of the defendant no.1.

The learned Advocate for the petitioner submitted that in the teeth of the order of status quo with regard to the nature, character and possession of the property in question, the learned Court below could not have passed the order allowing construction of a dwelling house under Section 151 of the Code of Civil Procedure. It was further submitted by him that the learned Court below ought to have directed the parties to approach the Court under the appropriate provisions of law for variation and/or modification of the status quo order. It was further submitted by him that subsequently the petitioner became

the owner of the property in question and the name of the petitioner had been mutated.

I have heard the submissions of the learned Advocates for the respective parties. It is an admitted position that on the said land the petitioner was already residing having constructed her own residential house. The suit for partition was filed by the petitioner. Pleadings are that the petitioner and the defendants are the co-sharer. Subsequently, whether the title was acquired by the petitioner are matters to be decided at the trial. Once the learned Court below had come to a finding on the commissioner's report that an unfinished house was lying in the suit property and all building materials had been lying wasted, the defendant no.1 should be allowed to construct her dwelling house subject to the condition that no equity will be claimed with regard to the said construction. The construction will be at the own risk of the defendant no.1 and shall be subject to the final result of the partition suit. If it is found that the said area falls within the share of the some other co-sharer or within the share of the plaintiff, the defendant no.1 shall demolish the said construction at his own costs.

The defendant no. 1 is also restrained from creating any third party interests in respect of the construction. The entrance to the petitioner's house shall not be blocked by such construction.

With the above observations, this revisional application is disposed of.

This Court has not expressed any view as to the title and claim of the parties in the suit property.

As the suit is of 2014, the learned Court below is directed to dispose of the said suit expeditiously without granting any unnecessary adjournments.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)

