

Sn 11.3.21
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C.O.166 of 2021

**PROTIMA DAS VS. KASHINATH MONDAL &
ORS.**

**Mr. Asis Kumar Bagchi
Mr. Satyajit Mondal
Mr. Suranjan Mondal
 ..for the petitioner
Ms. Sarmistha Ghosh Sharma
 ..for the opposite party no.1**

None appears on behalf of the opposite parties/ defendants except the defendant no.2/opposite party no.1. On the last occasion also none appeared on behalf of the opposite parties. Let the affidavit of service filed in Court today be taken on record.

Affidavit of service reveals that the notice was served to the learned Advocate for the defendants in the learned Court below on March 1, 2021 along with a server copy of the order of this Court dated February 10, 2021.

Records available before this Court reveals that only defendant no.2/opposite party no.1 contested the application for repair. Thus, the matter is taken up in the absence of the other opposite parties as this Court is of the opinion that they are not interested to contest the revisional application.

The petitioner is the plaintiff in the partition

suit being Title Suit No. 116 of 2016, pending before the learned Civil Judge, Junior Division, 2nd Additional Court, Diamond Harbour, District South 24 Parganas. The petitioner is aggrieved by an order dated February 6, 2020 passed by the learned Court below rejecting an application for repair of the thatched roof top and a mud wall in the portion of the property enjoyed by the plaintiff situated towards the eastern part of the suit property.

The learned Court below observed that as the specific portions have not yet been allotted to the parties concerned and it was not possible to ascertain the portion enjoyed by the plaintiff, the application for repairing could not be allowed.

Mr. Bagchi, learned Advocate for the petitioner submits that the repair was necessary the thatched rooftop was destroyed due to natural and tear and unless the said roof was repaired temporarily, the plaintiff would not be able reside in the premises during the monsoon season. It is further submitted that one of the mud walls in a room used by the plaintiff was also dilapidated and the same required repairing without any pucca construction but in a way that the room may be used and the plaintiff would be able to reside there.

Ms. Sharmistha Ghosh Sharma, learned Advocate appearing on behalf of the opposite party no.1 submits that several litigation have been initiated

between the parties on account of violation of the order of injunction passed by the learned Court below in the partition suit. It is also submitted that the plaintiff tried to raise construction over the suit property in violation of the order of status quo and an application for mandatory injunction praying for such construction to be demolished was also pending for final decision. It is further submitted that the partition commissioner filed a report but the said report was rejected by the learned Court below and an appeal is pending therefrom. It is her specific submission that when there are allegations of violation of the order of injunction and proceedings were still pending with regard to the same, it is apprehended that under the garb of repairing, the plaintiff would raise new pucca construction in violation of the order of injunction which would result in changing the nature and character of the suit property and the partition by meets and bounds would be next to impossible.

I have considered the rival contentions of the parties. It appears that the application for repair had been rejected on an earlier occasion by the learned Court below. The learned Court was not convinced with the possession of the plaintiff and the contention of the plaintiff with regard to the immediate need for repair. However, these are equitable reliefs which may be required to be granted in a fact situation. It is the specific

case of the plaintiff that the thatched roof made of straw was destroyed and there was immediate need for repair to prevent the seepage of rain water. It is also stated that one of the mud built walls in a room was damaged. The plaintiff does not pray for an order allowing permanent pucca construction on the premises. The plaintiff only prays that the damaged portions may be repaired by way of a temporary measure. As the matter is contentious, this Court is of the opinion that the repair of the destroyed portion of the thatched roof and the single mud wall in one of the rooms out of three rooms occupied by the plaintiff may be repaired temporarily under the supervision and direction of a Commissioner. The plaintiff shall approach the learned Court below for appointment of a Commissioner. The Commissioner shall assess if there is any requirement for repair as prayed for by the plaintiff with regard to one wall and the roof. The learned Commissioner shall file a report before the learned Court below with the above assessment. Thereafter, the learned Court below shall pass necessary directions for the repair based on the report of the learned Commissioner. If the learned Commissioner finds that the repair is necessary, the repair shall be done as per the supervision and direction of the Commissioner and only to the extent assessed by the Commissioner and not beyond that. The remuneration of the Commissioner

shall be borne by the plaintiff. The cost of repair will also be borne by the plaintiff. The plaintiff shall not claim any equity with regard to repair made.

The entire exercise shall be completed within two months from the date if the plaintiff approaches the learned Court below for appointment of the learned Commissioner

This revisional application is disposed of.

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.)

