

05.02.2021
Court No. 19
Item No.13
CP

C.O. 237 of 2021

Dayamoy Mondal & anr.
vs.
Sankar Biswas & ors.

Mr. Uttiya Ray

...for the petitioners.

Mr. A. Santra

....for the plaintiff/opposite
party no. 1

This revisional application has been filed by the defendants 1 and 2 in the Title Suit No. 28 of 2020, being aggrieved by an order dated October 21, 2020, passed by the Additional District Judge, 1st Court, Katwa in Misc. Appeal No. 2 of 2020.

The Misc. Appeal No. 2 of 2020 arose out of an order of refusal of temporary injunction by the learned Trial Judge. According to the petitioner, the order of status quo passed by the learned lower appellate court has caused irreparable loss and injury to the petitioners as the order was passed in the midst of an on going construction of a dwelling house in the portion that was occupied by the defendants/petitioners. The said construction was done upon obtaining a sanction plan. On the verge of completion of the house, the said order impugned

was passed. It is further shown that the order initially was passed on October 21, 2020 by which the learned appellate court directed status quo to be maintained till the disposal of the temporary injunction application by the learned Trial Judge. Thereafter, on the strength of an application under Section 151 of the CPC an order was passed on November 24, 2020 by which the learned lower appellate court directed the status quo to be maintained until the disposal of the suit.

I have considered the rival contentions and I have gone through the records.

In my opinion, in a partition suit every cosharer has title over every inch of the property. It is an admitted fact that the petitioners are building a dwelling house on a portion of the property which are under their possession, for their personal use.

Thus the order of status quo is modified to the extent that the defendants will be entitled to complete their construction strictly in terms of the permission on sanction plan. No obstruction will be created in the plaintiff's enjoyment of the suit property. The defendants will not alienate the suit property or create any third party interest. The defendants will construct at their own risk and such construction will be subject to the final decision in the suit.

The defendants will not claim any equity in respect of the said construction and the defendants will file an undertaking before the learned court below to demolish the structures if ultimately it is found that the area did not fall within the share of the defendants.

The orders impugned dated October 21, 2020 and November 24, 2020 are modified to the above extent.

The revisional application is disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)