

DHIRAJ SARKAR & ORS. VS. BISWANATH SARKAR

Mr. Manabendra Nath Thakur
Mr. S.N. Chattopadhyay
Mr. Chiranjit Chatterjee
Mr. Anindya Sengupta
..for the petitioners
Mr. S.M. Obaidullah
Mr. Goutam Debnath
..for the O.P.

This revisional application has been filed by the defendants in Title Suit No.55 of 2019, pending before the learned Civil Judge(Junior Division) 1st Court, Serampore, District Hooghly.

It is the contention of the petitioners that by an order dated January 20, 2020 the learned judge rejected an application filed under Section 151 of the Code of Civil Procedure for repair of the “B” schedule property, which is admittedly the property of the petitioners.

It is contended by the learned Advocate for the petitioners that the suit was filed for a declaration of ownership with the plaintiff/opposite party over “A” schedule property and the application for repair was only with regard to certain portion of the “B” schedule property which has been damaged partially due to the

age of the property.

It is submitted that unless the repairs are allowed, the petitioners will not be able to reside in their own property in the coming monsoon season. The petitioners submitted that the parties by an order of ad-interim order of injunction were restrained from changing the nature and character of the suit property.

Learned Advocate for the opposite party/plaintiff submits that the petitioners by filing an application for repair under Section 151 of the Code of Civil Procedure invited the learned Court to modify the ad-interim order of injunction, which is not permissible under the law. It is submitted that the suit relates to illegal construction without leaving side space as per the Municipal Building Rule. By obtaining an order for repair, the defendants would once again make construction by encroaching into the premises of the plaintiff, being the "A" schedule property.

Heard learned Counsels for the respective parties. From the plaint, I find that the plaintiff prayed for a declaration that the plaintiff is the absolute owner of the "A" schedule property. A prayer for permanent injunction restraining the defendants from raising any construction by encroaching into "A" schedule property without leaving any side space in the eastern portion of

the “B” schedule property has also been made.

I have considered the nature of injunction passed by the learned Court below and also schedule of repairs. In my opinion, the defendants should be allowed only to repair such portion of the “B” schedule property which are absolutely necessary to make the property habitable. Thus, the damaged portion of the parapet of the roof, rain water pipes, pipe lines and the ventilator to the extent damaged is allowed to be repaired but no new construction in the garb of repair shall be added to the already existing structure. The ceiling and the walls shall be repaired from the inside the premises in order to remove the damp. The other pipes shall be repaired which are on the external wall but if new pipes are installed the same shall be in place of the existing old pipes and no extra pipes are allowed in the premises.

It is made clear that this order shall not be used by the petitioners as a license to make new constructions. The order is limited only to the extent of repair of the damaged portion in the building as recorded in the aforementioned paragraphs. The repair is only for the purpose of enabling the petitioners to reside in the premises and prevent any water leakage into the bedrooms.

Such repair is allowed without prejudice to

the rights and contentions of the parties to the suit and no equity will be claimed by the petitioner in the suit with regard to the same.

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.)

