

23 01.03.2021
as

F.M.A.T.550 of 2020
With
CAN 1 of 2020

Lutfa Beguum alias Lutfunnesha Bibi
Vs.
Afjal Hossain & Ors.

Mr. Shyamal Mukhopadhyay,
Ms. Rakhi Ghosh.

...for the Appellant.

Despite service there is no representation on behalf of the plaintiffs/respondents. The plaintiffs/respondents filed a partition suit and separation of shares alleging that the property described in the suit is the joint property and despite the request for amicable partition, the present defendant/appellant has refused to such request.

In the midst of the suit, an application for temporary injunction was taken out alleging that the present appellant is making construction in the joint property and if it is allowed to make such construction, it would invite irreversible situation at the time of passing the final decree. By the impugned order, the trial court restrained the appellant/defendant from making any construction over the suit property or from changing nature and character of the suit property

till the disposal of the suit. At the time of hearing of the instant appeal, we ask the learned Advocate for the appellant that in the event it is found that the said construction is made on the joint property whether he is agreeable to demolish the same. In view of the above, written undertaking has been filed today. Let the same be kept on record.

A co-sharer is the owner to the extent of the share in respect of a joint property along with the other co-sharers. They have every right in the joint property along with the other co-sharers and, therefore, it would not be proper that a co-sharer should be restrained from making any construction in the joint property.

In view of the undertaking having given before this Court, we do not feel that the blanket order of such nature should be passed against the defendant/appellant. The order impugned is set aside. The present appellant shall demolish the structure in the event it is found that the same has been done on the joint property. The present appellant shall also be disentitled to claim any equity at the time of passing the final decree.

The appeal and the application are

disposed of.

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

(Harish Tandon, J.)

(Kausik Chanda, J.)

