

07.02.2022
SL No.5
Court No.8
(gc)

**FMA 959 of 2018
With
CAN 1 of 2017
(Old No: CAN 11739 of 2017)**

**Sk. Imran Ali & Ors.
Vs.
Smt. Shampa Kha & Anr.**

(Via Video Conference)

The appellants are not represented nor any accommodation is prayed for even in the second call.

The appeal is arising out of an order passed by the learned Civil Judge (Senior Division), Ghatal on 8th September, 2017 in an application under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure. The learned Trial Judge on consideration of the materials on record directed the parties to maintain status quo in respect of the nature and character of the suit property and not to make any kind of construction thereon till disposal of the suit. The appellants are the defendants Nos.1 to 5 in the suit. The appellants are aggrieved by the impugned order that the appellants have purchased a demarcated portion of land measuring about 14 decimal and they have been in possession of a portion without any interruption or interference from anybody else for a considerable length of time. The appellants constructed pillars surrounding the land of the appellants/defendants

when no objection was raised to the construction of the said pillar.

The learned Trial Judge in the impugned judgment had noted that in the first deed of the vendor dated 10th March, 1977, no demarcated portion of the land was transferred in favour of the appellants. Moreover, from the materials on record it was not possible to infer that the suit property has been legally partitioned and on such consideration order of status quo was passed. It is true that in a suit for partition, every co-owner has a right over every inch of the undivided property unless it is partitioned and if the facts are such that the defendants are not in possession of the demarcated portion of the land, any construction may disturb the possession of every co-owner in the suit property.

Although, we are of the view that if the plaintiffs/respondents are in possession of the demarcated portion of the land, the Court may allow the party in possession of such demarcated portion to raise any construction without creating any equity in their favour as the balance of convenience and inconvenience would lie in favour of the party being in possession of the demarcated portion of a land. The fact remains that the order was passed on 8th September, 2017 and in all likelihood, the suit may have been disposed of or may be at the final stage of hearing. We are not inclined to interfere with the impugned order and direct the learned Trial Judge to

dispose of the suit as expeditiously as possible preferably within a period of eight months from the date of communication of this order subject to the convenience of the learned Civil Judge (Senior Division), Ghatal, in the event suit is still pending.

The learned Registrar Administration (L&OM) is directed to ensure the communication of this order to the learned Civil Judge (Senior Division), Ghatal for taking necessary steps.

With the aforesaid observation, the appeal being FMA 959 of 2018 and the application being CAN 1 of 2017 (Old No: CAN 11739 of 2017) stand disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)