

Dl. April 6,
18. 2022

F.M.A.T. 167 of 2020

Sri Arup Dolui
Vs,
Kanai Dolui & Ors.

Mr. Pratip Kumar Chatterjee,
Mr. Masud Mallik,
...for the appellant.

Mr. M. A. Samad,
Mr. Chandan Bhadury,
...for the respondents no. 9 and 11.

This appeal has arisen out of an order passed by the learned Civil Judge (Senior Division) at Ghatal, Paschim Medinipur, in connection with an application filed under Order XXXIX Rule 4 of the Code of Civil Procedure in a suit for declaration, partition and injunction.

The appellant is admittedly a co-sharer of the property in question. The learned advocate appearing on behalf of the respondents no. 9 and 11, in his all fairness, has submitted that the appellant is entitled to one-third share in the suit property.

The grievance of the plaintiffs is that the appellant has raised construction in respect of the areas beyond his share in the suit property disregarding the order of status quo passed in favour of the plaintiffs.

In the trial court, in stead of filing an application under Order XXXIX Rule 2A of the Code of Civil Procedure, an application under Section 151 of the Code was filed in which a prayer was made for demolition of the construction already made. There is a dispute with regard to the nature and extent of construction and the period on which the construction was made.

However, from the report of the learned Advocate Commissioner, it is apparent that the construction was raised in violation of the order of status quo. The report is not on record. For such acts, the appellant could have been proceeded under Order XXXIX Rule 2A of the Code of Civil Procedure.

However, having regard to the fact that the appellant is a co-owner of the suit property and appears to be in possession of a demarcated portion of the suit property on which he raised construction, we permit the appellant to complete the said construction strictly in accordance with the sanctioned building plan, upon depositing a sum of Rs. 50,000/- with the Calcutta High Court Legal Services Committee and upon payment cost of Rs. 20,000/- to the plaintiffs within two weeks from date, for such violation of the ad interim order of status quo. However, the said construction shall not create any equity in favour of the appellant and the same would be subject to the final result of the partition suit. The trial court is requested to expedite the hearing of the suit as far as practicable.

We make it clear that in the event the deposit and payment of costs, as aforesaid, are not made within the time stipulated, as above, in terms of this order, the trial court shall be entitled to initiate a proceeding under Order XXXIX Rule 2A of the Code of Civil procedure and direct demolition of the structure raised as we are of the view that there has been a violation of the ad interim order of status quo.

It is ordered that the said sum of Rs. 50,000/- shall be utilised for the welfare of the street children.

The impugned order is modified to the aforesaid extent and the appeal stands disposed of even at the admission stage.

In view of disposal of the appeal, nothing remains in the application for stay filed under CAN 1643 of 2020 and the same is also disposed of.

dns

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)