

Item-15 12-05-2022

FMAT 89 of 2022
CAN 1 of 2022

sg Ct. 8

Archana Saha & Ors.
Versus
Bikas Saha & Ors.

Mr. Kumar Jyoti Tewari, Adv.
Mr. Panchanan Hajra, Adv.
Mr. Aniruddha Tewari, Adv.

...for the appellants

Affidavit of service filed in Court is taken on record.

The appeal is arising out of an order dated 10th March, 2022 in connection with an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure and a petition under Order 39 Rule 4 of the Code of Civil Procedure.

The learned Trial Judge rejected the application filed by the plaintiffs under Order 39 Rule 1 and 2 on the ground that four of the defendants and the plaintiff have their residential house over the suit property and the plaintiffs constructed their house in their preferable positions. The defendant no.2 had purchased the eastern side of the property by a registered deed of sale and he cannot be restricted the enjoyment of the property. If during the pendency of the partition suit, the parties have indiscriminately raised constructions at their preferred places, the defendant no.2 cannot be restrained now from raising construction for the purpose of enjoyment of the property that he claimed to have purchased. The deed of the defendant no.2 would appear that 2 satak of the suit plots in eastern side has been sold to the defendant no.2. There was no order of injunction operating against such agreement.

On such consideration, we do not find any reason to

interfere with the order of the learned Trial Court. However, having regard to the fact that it is a suit for partition, we would request the learned Civil Judge (Senior Division), Arambagh, Hooghly, to dispose of the partition suit as expeditiously as possible and may also explore the possibility of a settlement that may be arrived at by the parties after all the parties are represented before the Trial Court by referring the matter to mediation.

The appeal and the application are, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Sugato Majumdar, J.)

(Soumen Sen, J.)