

03.08.2022

Sl.No. 52
Ct.No.3
Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 675 of 2022

Swapan Kumar Khanra

VS

Kajal Bera & Ors.

With

CAN/1/20222

Mr. Udaynarayan Betal

Mr. Mriganka Patra

...for the appellant/defendant

Mr. Sanjib Dutta

Mr. Manoj Kurmi

...for the respondent nos. 1 & 2

Re: CAN/1/2022

We have heard out the appeal itself today,
dispensing with all formalities.

We do not find any infirmity in the
impugned judgment and order of the learned
court below restraining the appellant/defendant
from making any construction on the subject
property. This is so, because the ownership and
possession of the co-sharer is joint. Before the
shares are determined and a plan for partition
prepared, the balance of convenience is in favour
of not allowing any construction. The court can
only consider allowing construction after the
preliminary decree is passed declaring the
shares of the parties.

In those circumstances, we dispose of this appeal (FMA 675 of 2022) by requesting the learned court below to proceed with the trial of the suit as expeditiously as possible, so that a preliminary decree can be made before 31st December, 2022.

After the preliminary decree is made it would be open to the appellant/defendant to approach the court by an application to allow him to make construction on a designated part of the property.

The connected application (CAN 1 of 2022) is also disposed of.

(Subhendu Samanta,J.) (I. P. Mukerji,J.)