

14.02.2022
Ct. 21
D/L 4
AB

C.O. 982 of 2021
(Via Video Conference)

Manas Bhattacharyya & Anr.
-Vs-
Apurba Naskar & Ors..

Mr. Swagata Dutta,

... for the petitioners

Mr. Siddhartha Paul,

...for the opposite parties

The present application under Article 227 of the Constitution of India is at the instance of defendants/ present petitioners being aggrieved by the order dated 18th November, 2020 passed by the learned Additional District Judge, 1st Court, Uluberia, in Misc. Appeal No. 20 of 2020 arising out of Title Suit No. 128 of 2017, whereby the learned District Judge, 1st Court, Uluberia, set aside the order permitting the present petitioners/defendants to demolish a two storied mud structure and raise a new construction thereon by learned trial court vide order dated 20.10.2020 in an application under Order 39 Rule 4 of C.P.C. filed by the petitioners/defendants.

The learned Additional District Judge, 1st Court, Uluberia, while setting aside the order of the learned Trial Court observed that learned Trial Court without modifying its earlier order of injunction dated 04.07.2019, where the learned trial Court had directed the plaintiffs/opposite parties and defendants/petitioners to maintain status quo in respect of nature, character and possession of the suit property in respect of which plaintiffs/opposite parties have prayed for partition till disposal of the suit.

Perused the order dated 04.07.2019 passed by the learned trial Court and from where it appears taking into consideration the facts that suit being for partition and where specific share of the parties was yet to be determined and allocated had rejected the defendants' petition u/o 39 rule 7 CPC for local inspection of the two storied mud structure for the purpose of demolition and raising a new construction thereon, but has allowed the plaintiffs' application for injunction and directed both sides to maintain status quo in respect of nature, character and possession of the suit property till disposal of the suit.

Surprisingly, same trial Court vide its order dated 20.10.2020 has allowed the defendants' application under Section 151 of C.P.C. and permitted the defendants to demolish the two storied mud structure and raise a new construction thereon and without taking into consideration its own earlier order dated 04.07.2019 where it had directed both the parties to maintain status quo and that too without modifying such order.

Being aggrieved by such order dated 20.10.2020, the plaintiffs have filed Misc. Appeal No. 20 of 2020. The learned Appellate Court while staying the operation of impugned order passed by the learned trial Court on 20.10.2020, held that without modification of the order of status quo dated 04.07.2019 the trial Court committed error.

Since the Title Suit No. 128 of 2017 being a suit for partition, this Court is of view until and unless specific share of the co sharers are determined and allocated it would be detrimental to the interest of the other co-sharers to allow demolition of a part of the joint properties and replace the same with a new construction.

Even for the sake of argument, if it is found that at the time of passing of the decree the

property which was allowed to be demolished and replace the same by a new construction is allocated to some other co-shares then there is possibility of multiplicity of the proceeding.

It has been contended by learned Advocate for the opposite parties that predecessor in interest of the plaintiffs/opposite parties have allowed the predecessor of the defendants/petitioners their family priest to stay in a portion of their property. That the defendants/petitioners have no legal right and title over the suit property cannot be allowed to demolish the structure and raise a new construction thereon which originally belongs to the plaintiffs predecessor.

Perused the cause title of the revisional application from where it is seen the plaintiffs/opposite parties having Naskar title belongs to Paundra Kshatriya caste whereas the defendants/petitioners title shows that they belong to Bengali Brahmin Bhattacharyya caste. Here we can not say the defendants are the co shares of the property which originally belongs to the predecessor of the plaintiffs unless the same is otherwise proved at the time of trial. Therefore, the submission placed by the learned Advocate for the

opposite parties/plaintiffs cannot be ruled out at this stage.

Be that as it may, prima facie it appears the learned trial Court without modifying its own earlier order of status quo appears to have passed the impugned order of demolition of mud structure and construction of new structure thereon. The order dated 20.10.2020 is silent whether the learned trial court set aside the entire order of status quo or modified the same to the extent permitting the defendant to demolish and raise new construction. Therefore, this court does not find any illegality or material irregularity in the order that has been passed by the learned Appellate Court and any reason to interfere with the order passed by the learned Additional District Judge, 1st Court, Uluberia, in Misc. Appeal No. 20 of 2020 arising out of Title Suit no. 128 of 2017 on 18.11.2020.

Accordingly, **C.O. 982 of 2021 is dismissed.**

Connected applications, if any, are disposed of.

Interim order, if any, stands discharged.

There will be no order as to cost.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)