

14.12.2022
KC(7)

F.M.A. 795 of 2022
Santosh Kumar Ghosh
-versus-
Monotosh Ghosh
With
CAN 1 of 2022

Mr. Sounak Bhattacharya.....For the appellant.

Mr. Kallol Bose,
Mr. Suvadeep Bhattacharjee,
Mr. Nilanjan Pal.....For the respondent.

Mr. Kallol Bose, learned advocate for the respondent has taken an extremely fair stand in the matter.

This is a partition suit.

Before the suit was instituted the parties, who are brothers, had obtained sanction of a building plan from the local authority for construction of a market complex on the suit property.

Thereafter, the suit was instituted by one of the brothers, the respondent/plaintiff, and an order of status quo was obtained from the learned court below.

We have been shown a photograph of the property. In part of it construction has been completed by the respondent and business is being carried on. Signboards of diverse organisations can be seen. In the other part only kachha construction has been made by the appellant/defendant.

The construction in the other part of the property admittedly was completed by the respondent before the partition suit was filed.

Mr. Sounak Bhattacharya, learned advocate for the appellant/defendant interprets the impugned status quo order as one preventing his client from proceeding with any construction on the other part of the building.

Mr. Bose on instruction submits that his client has no objection if the appellant completes the construction in accordance with the sanctioned plan.

We order accordingly and direct the appellant that he would have the option to complete the construction in the other part of the property strictly according to the sanctioned plan.

Now the question arises as to whether the defendant/appellant would be permitted to let out or transfer the part constructed by him?

Mr. Bhattacharya submits that since the respondent has made construction and allowed business to be carried on from the part in his occupation, his client should also be allowed to do so.

First of all, the construction by the respondent was made prior to institution of the partition suit. Normally in a suit for partition, status quo regarding construction on the date of institution of the suit is directed to be maintained, by the court.

In this case, by consent of the parties construction can be completed in the other part of the building.

This court is only concerned with construction and not letting out or transfer of a part of the premises.

Let construction be carried out under the supervision of a Special Officer appointed by this court.

We appoint Mr. Amitava Paul, advocate and member of the Bar Library Club (Mobile No. 98301 30743) as Special Officer to supervise the said construction undertaken by the appellant.

He shall be paid an initial remuneration of 2000 G.M.s, to be equally shared by the parties and thereafter 900 G.M.s per month, to be equally shared by the parties till the construction is completed by the appellant.

Whilst the construction is progressing or after completion, the appellant will have the liberty to approach the learned court below for permission to carry on business himself or through third parties in the part to be constructed or already constructed by him. On such application being made, the learned court below shall consider the same in accordance with law.

We request the learned court below to dispose of the partition suit by pronouncing a final decree of partition within one year of communication of this order.

The impugned order of the learned court below is modified to the above extent.

The appeal (F.M.A. 795 of 2022) and the connected application (CAN 1 of 2022) are disposed of.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)