

ML 17.08.
175 2022
AGM
/
RKB
Ct
07

C.O. 1798 of 2022

**Ajit Kumar Das
Vs
Nabin Das & Ors**

Mr. Manas Kumar Das, ... For the petitioner.

Petitioner assails order dated 8th June, 2022 passed by learned Civil Judge (Senior Division), Kandi, Murshidabad in Partition Suit No. 345 of 2021, allowing construction to be raised by opposite party/defendant no. 1.

Admittedly, there has been a local inspection commission in respect of the subject property prior to allowing the prayer for construction. The learned commissioner has also submitted his report.

A dwelling house is sought to be raised on subject property upon replacing the old one, under possession of defendant no. 1.

The undenyng position is that parties to this case are co-sharers having their respective share in the suit land.

Learned advocate appearing for the petitioner submits that the proposed construction is on the advantageous portion of the suit land, and in the event of construction being allowed to be raised,

there will be direct impact of causing hindrance to distribute the shares of the co-sharers to the extent of their legitimate share in the suit land.

When there is already an old house under possession of defendant no. 1, which has been sought to be constructed for replacing old one taking order of the Court, the existing possession of petitioner/defendant no. 1 in suit property cannot be disputed any more.

The Court below is not oblivious of the fact that a dwelling house has been sought to be raised on the subject property upon substituting the old house, the defendant no. 1 possesses at the moment.

Since there has been sufficient riders put in the order impugned, as regards the construction to be undertaken by the defendant no. 1, there is hardly any scope for any interference by this Court.

The order impugned is, however, modified with a further condition, apart from the two conditions already put in there, to the effect that the proposed construction will not be carried out in such a way contravening the relevant rules, if there be any operative over the field.

Other portion of the order will, however, remain unchanged. The impugned order is modified to the extent mentioned hereinabove.

Petitioner is directed to make communication of

this order to the learned court below as well as to the learned advocate appearing in the court below for the opposite parties and the opposite parties.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)