

Item-1
sg

04-02-2022

Ct. 8

FMA 1273 of 2021
And
CAN 1 of 2021

Basudeb Dutta & Ors.
Versus
Susanta Dutta & Ors.

(Through Video Conference)

Mr. Rabindranath Mahato, Adv.
Mr. Aritra Shankar Ray, Adv.
...for the appellants
Mr. Nonigopal Chakraborty, Adv.
...for the respondent nos.
1,2,4,6,7,8,10,11,13&14

By consent of the parties, the appeal and the application are treated as on day's list and disposed of by this common order.

This appeal is arising out of an order, being Order No. 10 dated September 4, 2021 passed by the learned Civil Judge (Senior Division), 3rd Court at Midnapore in connection with an application filed by the petitioner in a suit for partition.

The impugned order was passed in connection with a petition filed by the plaintiffs for modification of an interim order of injunction dated 28th January, 2021 for construction of the house under Pradhan Mantri Awas Yojana. Before the learned Trial Court, the plaintiff no.2 contended that he had constructed a mud-built thatched house upon Plot No.397 of Khatian Nos. 234 and 235 and he has been residing therein along with his family members. It was further contended that the plaintiff no.2 reasonably required a suitable accommodation for the betterment of his family members and he had also received a grant under the project of Pradhan Mantri Awas Yojana for construction of

new pucca house upon Plot No. 397 which is exclusively under his possession. The defendants contested the said proceeding and relied upon the earlier order of the learned Trial Court by which the parties were directed to maintain status quo as regards nature, character and possession.

The learned Trial Court was required to decide whether on the given facts, any modification to the earlier order of injunction was necessary for better enjoyment of the suit premises by the appellants. Before the learned Trial Court it was contended on behalf of the defendants that the plaintiffs raised construction in violation of the order of status quo and the land in question i.e. Plot no. 397 is not a 'Bastu' land. However, it is evident from the submission of the defendants that the said defendants were possessing different portion of the suit property by way of amicable arrangement.

The learned Trial Court denied the modification only on the ground that the plaintiff cannot change the nature of the suit land without the consent of the other co-sharers and without partitioning the suit land inasmuch as, the plaintiff had failed to identify his possession on specific portion of land out of the suit land on which he intends to make construction.

Mr. Mahato, learned Counsel appearing on behalf of the appellants has submitted that while the other co-sharers had constructed over the land presently in their possession, there was no reason why the plaintiffs should not have been allowed to raise construction for better enjoyment of the property till the partition proceeding attains finality.

The learned Counsel for the respondents, however, opposes the prayer and submits that the plaintiff had his own house on different location and there is no case made out before the learned Trial Court as well as before this Court for interfering with the impugned order.

We have perused the order under appeal. It appears from the record that the suit property was recorded as '*ghar o may angina*' which means 'room with courtyard'. It is true that from the description it cannot be possible to decide whether it is a mud-built room or a pucca structure.

Be that as it may, it was the contention of the defendants that they are possessing different portion of the suit property by amicable arrangement. If we accept this position as the present state of affairs and it would not be equally permissible for the defendants to claim right over such portion of the land unless the plaintiffs and the other co-shares have given consent to raising such structures in their possession. The equity has to be evenly balanced while the defendants are holding on to their properties of a settled portion claiming that such share is rightful on the basis of the amicable arrangement, which is required to be proved in the trial, the plaintiffs cannot be denied such similar relief.

We feel that for better enjoyment of the property presently in possession of the plaintiffs, the plaintiffs may be allowed to raise construction on the demarcated portion of the land upon Plot No. 397 under the Pradhan Mantri Awas Yojana scheme on condition that in the event, the suit property is not allotted to the plaintiffs ultimately in the final decree, the plaintiffs shall not claim any equity over the said property. This is also equally applicable to the defendants in the suit.

In arriving at the said conclusion we have taken note of the decision of the co-ordinate Bench in *Sanghati Pal vs. Prakash Adhuryya & Ors.* reported at *2009 (2) CLJ 153(Cal)* and the decision of the Apex Court in *Mandali Ranganna & Ors. vs. V. T. Ramachandra & Ors.* reported at *AIR 2008 SC 2291*.

However, to avoid any controversy, Mr. Soma Bag, learned Advocate, who was appointed as an Advocate Commissioner in terms of the order dated 4th September, 2021 in connection with an application filed by the defendants for local inspection is directed to oversee the said construction and to ensure that the construction takes place only in respect of the portion of the land in possession of the plaintiffs. Mrs. Bag shall be entitled to a remuneration of Rs.10,000/- to be paid by the plaintiffs. Mrs. Bag shall file a report in the pending suit and the same shall be kept on record of the suit.

The impugned order dated 4th September, 2021 stands modified to the aforesaid extent.

The appeal and the application, accordingly, stand dismissed.

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

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)