

12.12.2022

Sl.No. 11

Ct.No.03

Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMAT/422/2022

With

CAN/1/2022

Aleya Bibi and Ors.

Vs.

Mirjanagar Bajar Jame Masjid Bibi & Ors.

Mr. Mohinoor Rahaman

Ms. Maria Rahaman

Ms. Iqra Rahaman

...for the appellants/plaintiffs

Mr. Mahamudul Hassan

Mr. Zeeshan Rahman

...for the defendant no.1/
respondent.1

Ms. Indrani Pal

Mr. Abhijit Pal

...for the respondent nos. 2-10

Re: CAN/1/2022

We admit the appeal.

As the point involved is not very complicated and for the ends of justice, we proposed to hear it out dispensing with all formalities.

The suit in the learned court below is for declaration of title and partition between the parties. The title to some very large portions of the suit property is hotly disputed.

In one of such portions, there is a mosque. The appellants/plaintiffs as well as the respondents claim title to it. Each of the two groups relies on a deed of transfer. The mosque

as it stands now is a G-level structure, as submitted by learned counsel for the respondent no. 1. The first floor has been constructed, but is not complete; plastering, painting etc. work is going on.

In the midst of this, the respondents/defendants have started constructing the second floor.

The appellants/plaintiffs seek an order of injunction from this court restraining them from making this construction.

The learned court below in its impugned judgment and order dated 22nd September, 2022 has, inter alia, said:

“Therefore, considering the principle of balance of convenience and inconvenience, methinks, this a fit case to refuse to grant any relief to the plaintiffs in the form of injunction. However, the construction, if any, made by the defendant no. 1, will be subject to the result of the suit and no equity can be claimed.

Hence, it is

ORDERED

That the petition U/o 39 r 1 and 2 r/w Section 151 of CPC is rejected on contest.

To 04/1/23 for framing of issues.”

In a partition and administration suit, where the plaintiffs have been able to, prima facie, show some title to the property, usually the court does not permit any construction work to be proceeded with unless the title to the property is determined by it and the property distributed to the owners on partition (see *Prasanta Maji & Ors. Vs. Sukhbinder Singh & Ors*, reported in AIR 2022 Cal 307 and *Sopan Maruti Thopte & Anr. Vs. Pune Municipal Corporation & Anr.*, reported in AIR 1996 Bom 304).

In this case, the learned judge of the learned court below has tried to carve out an exception to the above principles on facts by referring to an agreement dated 24th February, 2018 in which the appellants/plaintiffs nos. 5 and 6 have consented to the erection of the mosque by the defendant no. 1.

The learned judge also held that possession of the said part of the property is with the said defendant no. 1.

Learned counsel for the appellants very strongly denies the agreement dated 24th February, 2018, alleging that it is a fabricated document and no consent was granted by his clients.

We are told that the suit is ready for trial after completion of the discovery procedure.

All these questions regarding title to the property, validity of the agreement dated 24th February, 2018 and so on will be decided in the suit.

We direct that a final decree of partition be pronounced by the learned court below, latest by 31st July, 2023.

Having regard to the above general principles of law regarding the reluctance of the courts to permit construction in the partition suit and also taking into account the fact that the respondents have almost completed the first floor, we direct that the respondent no. 1 shall be permitted to complete the construction of the first floor by doing repairing, renovation, plastering and painting work etc.

As regards the second floor, the respondents may proceed with only the preliminary work and not any major construction work till 31st July, 2023.

If for some reason, the learned court below is unable to pronounce the final decree by 31st July, 2023, the respondents shall be at liberty to apply to the learned court below for permission to proceed with the construction of the second

floor. The learned court below on consideration of the, prima facie, case balance of conveyance and inconvenience etc. shall determine the application in accordance with law, as expeditiously as possible.

The impugned judgment and order dated 22nd September, 2022 is modified to the above order.

The appeal and the connected application are, accordingly, disposed of.

(Biswaroop Chowdhury,J.) (I. P. Mukerji,J.)