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Ct. 18
02.05.2022

C.O. No. 4214 of 2019

Syed Md. Akram Ali
Vs.
Syed Asrar Ali & Anr.

Mr. Sudeep Sanyal,
Mr. Sukanta Das ... For the petitioner.

Mr. Sudeep Sanyal, learned advocate for the petitioner files affidavit-of-service, which is taken on record.

In spite of service none appears on behalf of the opposite parties.

The plaintiff in a suit for partition is the petitioner of the present application under Article 227 of the Constitution of India which is directed against the order dated September 05, 2019 passed by the 4th Court of learned Additional District Judge, Paschim Medinipur in Miscellaneous Appeal No. 31 of 2018 thereby affirming the order No. 23 dated April 19, 2018 passed by the 2nd Court of learned Civil Judge, (Senior Division), Paschim Medinipur in Title Suit No. 1086 of 2017.

The petitioner in said suit filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure thereby prayed for an order of injunction restraining the defendants/opposite parties from executing any construction over the suit property. The learned Trial Judge dismissed the said application

and the appeal Court below by the order impugned has affirmed the said order of the learned Trial Judge.

A co-sharer cannot restrain another co-sharer from making construction on his occupied portion of the joint property unless it is proved that such construction would embarrass the share of the other co-sharers and it is on the best portion of the suit property.

Mr. Sudeep Sanyal, learned counsel appearing on behalf of the petitioner fairly submits that such requirement is absent in the application for injunction.

In consequence thereof this Court does not find any reason to interfere with the order impugned.

C.O. 4214 of 2019 is dismissed without any order as to costs.

The learned Trial Judge is requested to expedite the disposal of the suit.

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

(Biswajit Basu, J.)