

12.06.2023
Court No. 19
Item no.10
CP

C.O. 143 of 2023

Kamal Quila & anr.
Vs.
Khudiram Kuila & ors.

Mr. Gopal Chandra Ghosh
Ms. Indrani Pal

.....for the petitioners.

Mr. Subrata Santra

.....for the opposite party no. 1.

The order dated December 23, 2022 passed in Title Suit No. 12 of 2019 by the learned Civil Judge (Senior Division), 1st Court, Tamluk, Purba Medinipur is redundant. The learned Judge sought to modify the order dated July 28, 2022 passed in the said suit by which the petitioners and the defendant no.1 were allowed to make constructions within their respective shares as delineated by their deeds, which was further elaborated by a sketch map. The commissioner's report also indicated proportionate shares of the parties and, hence, composite order was passed, allowing the prayers for modification of the order of injunction thereby allowing such construction.

Subsequently, the defendant no. 1 again filed an application for modification of the order dated July 28, 2022 on the ground that such modification

would be necessary to avoid multiplicity of suits. Contention of the defendant no. 1 was not supported with reasons as to why there would be multiplicity of suits if the order dated July 28, 2022 was not modified. The nature of modification was also not elaborated. The order impugned is also bereft of the reasons which prevailed upon the learned court below while allowing modification.

In the opinion of this court as the respective possession of the parties are on record as per the learned commissioner's report, the construction will be on the basis of the order dated July 28, 2022 revives. The order impugned is set aside and cancelled.

It is made clear that the parties shall construct on the areas occupied by them at present, which appears from the learned commissioner's report and which was also pleaded in their respective applications under Order XXXIX Rule 4 of the Code of Civil Procedure.

It is also made clear that such construction will abide by the final result in the partition suit and the parties shall not claim any equity or right and interest in respect of the their respective constructions. The construction will continue by both the parties in terms of the earlier order dated July 28, 2022 and, strictly in accordance with the

sanction plan, precisely within the area delineated in the commissioner's report.

It appears to the court that the shares of the plaintiffs and the defendant no. 1 are not in dispute. The other defendants are not contesting. Thus, the court is requested to pass a preliminary decree within a period of six months from the date of communication of this order.

This court has not gone into the merits of the suit.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)