

17 21.06.23

Ct. No. 04

akd

F.M.A.T. 56 of 2023
CAN 1 of 2023

Basudeb Dutta & Ors.
Vs.
Susanta Dutta & Ors.

Mr. R. N. Mahata,
Mr. Aritra Shankar Ray.
... for the appellants.
Mr. Noni Gopal Chakraborty.
... for the respondent no. 7.

A belligerent litigant has filed the instant appeal having been blessed with an order of the Court in relation to construction of a structure over the joint property being the subject matter of partition suit, challenging the impugned order passed in the same tune and manner in which the blessing was showered upon the plaintiffs.

In a suit for partition instituted by the appellants the order of status quo with regard to the nature, character and possession was passed by the Trial Court. Subsequently the plaintiffs/appellants took out an application seeking permission to raise construction as they have been allotted a substantial amount of money under *Pradhan Mantri Awas Yojana*.

The matter ultimately travelled to this Court at the behest of the party to the proceeding being FMA 272 of 2021 and the order of the Trial Court was modified to the extent that the order of status quo shall not stand in the way of raising construction under the said scheme and the permission was given to the plaintiffs/appellants to make construction subject to the condition that they shall not claim any equity at the time of final decree.

Having found that the plaintiffs have been blessed with such an order, the respondent no. 7 approached the Court with similar prayer and the

Court after noticing the same permitted him to raise construction over the plot nos. 394 and 395 under the *Pradhan Mantri Awas Yojana* on condition that was put on the plaintiffs/appellants by this Court.

Astonishingly the appeal has been filed by the plaintiffs/appellants with an intent to put a spanner to the right which they enjoyed in terms of the order passed by this Court not to be extended to the said respondent no. 7.

The equality in dispensation of justice is the hallmark of judicial system and a litigant, who was benefited with an order, cannot stand in the way of such benefit sought for by another litigant provided both stand on the same pedestal. The moment a suit for partition is instituted by the plaintiffs impleading the said defendant therein, a logical inference one can draw that they admit the right of such defendant in respect of the said joint property. If a co-sharer is permitted to raise construction over the joint property in terms of the order passed by the Court, he cannot stand in the way of passing the same order in relation to another litigant, as in a partition suit there is no concept of plaintiff and defendant.

However, a point is sought to be taken that plot no. 394 as indicated in the impugned order is not within the ambit of the partition suit, in other words, the said plot is non-suit property and, therefore, the Court ought not to have permitted the respondent no. 7 to make construction.

Though we have not been favoured with the copy of the plaint but solely relying upon the submissions made that the plot no. 394 is not an integral part of the schedule of the plaint, we do not find any fetter on the part of the said respondent no. 7 in making construction, as the order of status quo can only

shadow the property included in the schedule of the plaint. So far as the plot no. 395 is concerned, it is within the schedule of the plaint and, therefore, we do not feel that the decision of the trial Court in permitting the construction in an identical and similar manner what has been permitted to the plaintiffs/appellants over the joint property is required to be interfered with.

We thus do not find any point of law involved in the instant appeal.

The appeal and application are dismissed accordingly.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)