

13     06.06.23

Ct. No. 04

akd

**F.M.A.T. 94 of 2023**  
**CAN 1 of 2023**

**Kartick Karmakar**  
**Vs.**  
**Sujit Karmakar & Ors.**

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**Mr. Sambhunath De,**

**Mr. B. K. Samanta.**

**... for the appellant.**

**Mr. Tanmoy Chattopadhyay.**

**... for the respondent no. 1.**

In a suit for partition an injunction application was taken out by the plaintiff/appellant and an ad interim order of injunction in the form of status quo with regard to the nature and character of the suit premises was passed by the Trial Court.

On a date of passing the impugned order an application for extension of the said ad interim order was taken out. The Court proceeded to dispose of the application for injunction.

At the very outset we must record that the observations returned in the impugned order has a vital impact on the maintainability of the suit which should not have been done while disposing of an interlocutory application; even if we consider such observations to be tentative having no impact at the time of final adjudication of the disputes, yet it has persuasive effect on the hindsight in the mind of the Judge at the final stage of the proceeding. We find that the Court at one stage has observed that there is no partition deed nor a decree of the Court relating to the partition having effected in respect of the suit property, yet the Court proceeded to dismiss the injunction application solely on the ground that the other co-sharers have not been impleaded as party nor the entire property, which according to the learned Judge constitute a joint property, have been included in the hotchpot. Neither of

the parties have taken up such plea as the contesting respondents took a categorical stand that actually the partition was effected at a relevant point of time, which would be evident from the documents produced before the Court.

On the other hand, the plaintiff/appellant contends that the property was never partitioned and remained in joint possession of the respective co-sharer. Such being the stand if the Court was of the view that the property is not partitioned, we do not find any justification in not extending the interim order passed earlier.

Essentially the issue remained in such a suit is whether the property is joint or was partitioned at a relevant point of time on the basis of the assertion of the contesting respondents. Such issue needs to be decided upon full-fledged trial and the findings, which is returned at this stage, could have been possible at the time of delivering the judgement.

However, it is contended by the contesting respondents that the plaintiff/appellant has constructed a house and enjoying the possession therein, whereas he is creating an impediment in renovating and/or repairing the existing house, where the contesting respondents live with their family. It is apprehended that taking advantage of an order of status quo with regard to the nature and character of the suit property, the plaintiff/appellant may create disturbance and/or obstruction in effecting the repair and/or renovation of the existing structure in possession of the contesting respondents.

We are quite alive of the proposition that in the event any construction is made on the joint property, it may sometime bring an irreversible situation and a person, who has constructed the building, may claim

equity at the time of passing the final decree. However, we do not find any impediment on the part of the co-sharer in effecting the repair and/or renovation of the existing structure standing on the alleged joint property as every co-sharer has a right in respect of every inch of the property and the possession thereof is not only in commensurate with the shares held by him in the joint property but on behalf of other co-sharers as well unless an exclusion is claimed.

We, therefore, restore the order of status quo with regard to the nature and character of the suit property, but that shall not stand in preventing to make repair or renovation at the existing structure. In the event any construction is contemplated by either of the parties to the suit, liberty is granted to them to approach the Trial Court to seek leave in this regard, which shall be decided independent to the findings recorded in the impugned order.

**(Harish Tandon, J.)**

**(Prasenjit Biswas, J.)**