

17.05.2023

Sl.No. 8
Ct.No. 16
Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 274 of 2023

With

CAN 1 of 2023

Bishwajeet Dobey

Vs.

Gopal Krishna Dobey & Ors.

Mr. Biswajib Ghosh

Mr. Avirup Mondal

Mr. Sayan Chattopadhyay

Mr. Abhishek Agarwal

...for the plaintiff/appellant

Mr. Pappu Adhikari

Mr. A. Roychowdhury

...for the respondent nos. 1-14

Re: CAN 1 of 2023

We admit the appeal. we are in a position to dispose of this appeal dispensing with all formalities.

The learned judge in passing the impugned judgment and order dated 2nd March, 2023 has applied the correct principles. Somehow there is some incongruity in the impugned order. it is modified to the following effect:

The respondents/defendants are obliged under the Pradhan Mantri Yabas Yojona Scheme to build their house in the subject property according to the terms of the scheme within a particular timeline. If this timeline is not

adhered to then the benefit of the scheme would not be available.

In those circumstances, the respondents/defendants are permitted to continue with the construction and complete the same subject to the condition that if ultimately on partition the part of the property where construction is being made is vested in the appellant he would have the right over the land and building constructed including the right to demolish it and make a fresh construction.

The appellant/plaintiff would also have the right to make periodic inspection of the site and report to the court if there is transgression of the area within which the construction has been permitted to be made.

The respondents/defendants are also restrained from creating of any third party rights over the suit property. Similarly, the appellant/plaintiff is also restrained from creating of any third party right.

The parties shall not prevent one another from making ingress into or egress from the property and shall not cause any breach of peace in the property. The partition and administration suit may be proceeded with the learned court below.

We request the learned court below to dispose of it by passing a final decree for partition within one year from date preferably.

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

Urgent certified photo copy of this order, if applied for, be given to learned advocates for the parties upon compliance of all requisite formalities.

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