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Ct-08

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FMAT 171 of 2023

with

I.A No. CAN 1 of 2023

Aparna Bakshi

Vs.

Chandi Charan Samanta & Ors.

Mr. Partha Pratim Ray
Mr. Dyutiman Banerjee
.... For the Appellant

This appeal is considered and disposed of in absence of the respondent. We are of the view that the presence of the respondent is not required.

We have heard the learned representing the appellant.

It appears from the record that no formal deed of partition was executed, but the parties by way of amicable arrangement are in possession of their respective share in the joint property. The trial court was alive to the issue that without a formal partition being carried out every co-sharer has interest in every corner of the suit plot.

However, regard being had to the fact that all the co-sharers are in possession of certain portion of the joint property and enjoying such property to the exclusion of other, the trial court permitted the defendant no. 1 to complete the construction work, which has been already started after considering the report filed by the Commissioner, who was appointed to find out regarding the possession of the respective parties. The report of the Commissioner is not under challenge. There is nothing on record to suggest that the defendant no. 1 has encroached

any portion presently in occupation of the plaintiff.

Under such circumstances, in view of the decision of the Hon'ble Division Bench in the case of ***Sanghati Pal Vs. Prakash Adhuryya, reported in 2009(2) CLJ 153***, we permit that the construction work to be completed strictly in terms of the order passed by the learned Trial Judge without claiming any equity. However, this order may not affect the parties with regard to the adjustment by way of owelty money following the well settled principle that the occupation of a co-sharer shall not be ordinarily disturbed and may be adjusted with owelty, if such an issue arises in future. If the construction is confined only in respect of the area under occupation of the defendant no. 1 under amicable arrangement then only the question of owelty may arise and not otherwise. However, the trial court should look into the issue with regard to owelty independently following the observation made in this order. We proceed on the basis that there has been no encroachment and the defendant no. 1 has made construction in the portion presently under his occupation.

In view of the above, the appeal being FMAT 171 of 2023 stands disposed of.

In view of disposal of the appeal, nothing remains to be decided in the application for stay being CAN 1 of 2023 and the same is accordingly disposed of.

(Uday Kumar, J.)

(Soumen Sen, J.)

