

07.08.2023.  
Item No. 5.  
Court No. 13  
ap

**F.A.T. No. 563 of 2023**  
**With**  
**I.A. No. CAN 1 of 2023**

**Ramkrishna Sarada Mission & Anr.**  
**Versus**  
**Smt. Rama Sur & Ors.**

Mr. Indranil Nandi,  
Mr. Sayak Konar.

...For the appellants.

Mr. Barin Banerjee,  
Mr. Saurav Chaudhuri.

...For KMC.

Mrs. Krishnakali Swar.

...For the respondent nos.1 to 3.

1. This appeal being FMA No. 563 of 2023 arising out of F.M.A.T. No. 269 of 2023 is directed against Order No.2 dated 17<sup>th</sup> May, 2023 passed by the learned Judge, Xth Bench, City Civil Court at Calcutta in Title Suit No. 940 of 2023.

2. By the impugned order, the Court below, at an ex parte ad interim stage directed the parties to maintain status quo as regards the open space/common passage in the schedule to the plaint, situated at premises No 17 Maa Saradamoni Sarani Kolkata 700003 until the next date.

3. The facts of the case are that the appellants are the co-owners of premises Nos. 17C & 17D, Maa Saradamoni Sarani (formerly known as Bose Para Lane), Kolkata – 700 003. The appellants being the defendant nos.1 and 2 in the suit, namely,

Ramkrishna Sarada Mission and another are the exclusive owners of premises No.19, Maa Saradamoni Sarani, Kolkata – 700 003.

4. They also have an interest in premises No.17B, Maa Saradamoni Sarani, Kolkata – 700 003. Consequently, they also have interest in the said common passage in question in the suit.

5. The plaintiffs/respondents are co-owners in the suit at no 17B Maa Saradamoni Sarani kolkata had complained that the appellants, while effecting construction on the property at 19, Maa Saradamoni Sarani, Kolkata – 700 003 broke down a boundry wall in common with premises No 17, Maa Saradamoni Sarani.

6. The appellants however contend that the wall in question is part of premises No.19, Maa Saradamoni Sarani, Kolkata – 700 003 and the passage that is subject matter of the suit is located after the wall, within premises No 17B Maa Saradamoni sarani.

7. This Court has received two several reports dated 10<sup>th</sup> July 2023, and 31<sup>st</sup> July 2023 from the Kolkata Municipal Corporation. In the reports, particularly the one dated 31<sup>st</sup> July, 2023, it is clearly indicated that there is no unauthorized construction by the appellants. It is further indicated that the wall in question belongs to the appellant and is situated and

lying within premises No.19, Maa Saradamoni Sarani, Kolkata – 700 003.

8. In the aforesaid circumstances, this Court is of the view that the impugned injunction by the Court below need not be continued any further. The appellants undertake to effect construction on premises No.19, Maa Saradamoni Sarani, Kolkata – 700 003 strictly in terms of the sanction plan of the Kolkata Municipal Corporation without encroaching upon any other adjacent premises.

9. However, for the purpose of effecting construction on their premises and particularly completing the boundary wall at premises No.19, Maa Saradamoni Sarani, Kolkata – 700 003, the appellants may temporarily from time to time access such wall through the adjacent premises without creating any rights whatsoever in their favour therein.

10. The aforesaid order has been passed by consent of the parties. The Learned Counsel for both the parties agree that nothing further remains in the pending civil suit in the Court below.

11. In those circumstances, Title Suit No. 940 of 2023 now pending before the learned Judge, 10<sup>th</sup> Bench, City Civil Court at Calcutta, shall also stand disposed of based on the above order.

12. This Court records appreciation for the prompt reports submitted by the Kolkata Municipal

Corporation for effective disposal of the instant appeal and the suit.

13. In view of the discussions and observations made hereinabove, the instant appeal shall stand disposed of.

14. All interim applications shall also consequently be disposed of.

15. There will be no order as to costs.

16. The Registry of this Court shall communicate this order to the Registrar of the City Civil Court at Calcutta.

17. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

***(Rajasekhar Mantha, J.)***

***(Supratim Bhattacharya, J.)***