

August 23, 2023
Sl. No.17
Court No.19
s.biswas

CO 2562 of 2023

Sri Dilip Banerjee

vs.

Sri Subhradeep Banerjee and others

Mr. Shehnaz Tareq Mina

Mr. Pratick Sardar

... for the petitioner

Mr. Dipankar Aditya

Mr. Subir Sabud

Ms. Tina Biswas

... for the opposite party nos.1 to 3

This revisional application arises out of the order dated July 17, 2023, passed by the learned District Judge, Paschim Medinipur, in Miscellaneous Appeal No.101 of 2023.

By the order impugned, the learned lower appellate court affirmed the order dated June 13, 2023, passed by the learned Civil Judge (Senior Division), 2nd Court, Paschim Medinipur, in Title Suit No.259 of 2023. Both the courts allowed construction by the defendants under the PMAY(G) scheme, with some conditions.

The learned lower appellate court held that both the appellants and the respondents were co-sharers in respect of the suit property by inheritance from a common ancestor. That the petitioner had constructed the first floor upon the existing one storeyed pucca house after obtaining municipal building plan and had been living separately with his family members for a number of years. The entire

ground floor was being used and occupied by the defendant nos.1, 2 and 3, without partitioning the suit property. It appeared that all the co-sharers had equal share in the suit property. While the defendant nos.1, 2 and 3 tried to raise residential accommodation with aid from the government, the plaintiff tried to stop such construction.

In the partition suit, the learned trial judge did not pass any prohibitory order and allowed the defendant nos.1, 2 and 3 to construct under certain terms and conditions. According to the learned trial judge, apart from the plaintiff, the other co-sharers did not have any objection.

Mr. Mina, learned advocate for the petitioner, submits that the orders impugned passed by the learned trial judge and by the learned lower appellate court, suffer from various irregularities. The following issues were not considered:-

- a) The defendants were likely to take away major portion of the property.
- b) Once the construction was allowed, even if the partition was effected, the equal shares of the parties could not be divided.
- c) The defendants were likely to encroach the common areas and take away more than the share that they were entitled to, in respect of the suit premises.

d) That the terms and conditions imposed by the learned trial judge, were not likely to be abided by.

The learned advocate for the defendants submits that money was received under the Housing for All Scheme. Unless the money was utilized, the same would return to the government and the defendants would face undue hardship. They would be deprived of their right as beneficiaries under the Scheme. That the construction would be made in terms of the direction issued by the learned trial judge. That the right of the defendants as co-sharers were not disputed, and as such, the construction could not wait for an unlimited period, i.e., till the partition suit was finally decided. That each and every co-sharer had a right over every inch of the property and the co-sharers could not be enjoined from construction of the house which was under a time bound scheme.

It is further submitted that the plaintiff/petitioner had already constructed another floor of his own in the suit property upon obtaining municipal building plan and was residing there. Hence, it was not proper for the plaintiff to raise an objection when the defendants wanted to raise construction from the funds received from the government.

The learned trial judge had allowed the construction upon imposing certain terms and conditions which are as follows:

- 1) That the defendant No.1 to 3 would not construct the building in excess of their share in the land. Such construction would be subject to maintaining the statutory spaces in the four sides, as per applicable municipal/panchayat Laws.
- 2) They should keep vacant space of 6 ft. from the western side inner wall of the plaintiff's house and should not create any obstruction in the free ingress and egress of the plaintiff and his family members through the said passage.
- 3) That the defendants should remove the debris and other materials obstructing the entrance of the staircase to the plaintiff's house.
- 4) The defendants should not cause any hindrance or obstruction if the plaintiff keeps one bi-cycle or a motorcycle/scooter in one corner of the said passage without causing inconvenience to others.

The learned lower appellate court rightly did not interfere with such order. This court does not find any illegality or material irregularity with the orders

passed by the learned courts below. When the co-sharership was admitted and the plaintiff had himself constructed a floor exclusively on the joint property, he could not object. It is further made clear that any construction made by the defendants shall be subject to the final result of the suit and the defendants shall not claim any equity in respect of the said construction. The defendants will also file a report in the form of an affidavit, before the learned trial judge indicating that the terms and conditions imposed by the learned trial judge, were strictly followed.

The revisional application is thus dismissed.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)