

Item No. 7
31.07.2023
Court. No. 19
GB

C.O. 2692 of 2022

Nur Alam
Vs.
Md. Islam & Ors.

*Mr. Partha Sarathi Bhattacharyya,
Mr. Raju Bhattacharyya*

...for the Petitioner.

Mr. Bidurya Ghosal

...for the Opposite Party No.1.

The revisional application has been filed challenging an order dated August 18, 2022 passed by the learned Additional District Judge, 2nd Court at Islampur, District Uttar Dinajpur, in Misc. Appeal No.9 of 2022.

By the order impugned, the learned court allowed the defendant nos.1 and 2 in the suit/opposite party nos.1 and 2, to construct a pucca house on six decimals of land, consisting of nine rooms.

The petitioner/plaintiff is aggrieved by such order on the ground that in the teeth of an order of injunction, the construction was being raised and the learned court below ought not to have allowed the construction on such undivided property.

That the defendant nos.1 and 2 were already occupying a portion of the property upon construction of a dwelling house and there was no further requirement for any other construction. That the construction of such huge dimension, should not have been permitted during the pendency of the partition suit.

Mr. Bhattacharyya, learned senior advocate, draws the attention of the Court to several portions of the order impugned, in order to point out certain contradictions therein. Mr. Bhattacharyya further submits that the construction was not in accordance with law, inasmuch as, sanction/approval from the appropriate authority had not been obtained. Mr. Bhattacharyya also refers to the written statement and the written objection with regard to the contentions of the plaintiff.

Mr. Ghosal, learned advocate appearing on behalf of the opposite party no.1, submits that the construction was permitted by the learned court and was made subject to the final decision of the suit. The learned court below specifically stated that the defendant nos.1 and 2 would not claim any equity in respect of the said construction.

Upon considering the order impugned, it appears that there are finding of facts that the nine rooms had been constructed up to the lintel level and the roof casting was to be completed, when the ad interim order of injunction was passed. Hence, the learned court found that initially when the construction was being raised there was no objection from the plaintiff. Only when the construction was near completion and the roof casting was left, the suit was filed and the injunction was obtained. On such finding, the learned lower appellate court permitted the defendant nos.1 and 2 to complete the construction subject to the final decision in the suit.

Having considered the above fact, this Court is of the view that when there is a factual finding by the learned courts below that the construction upto lintel level had been completed and only the roof casting was left to be done when injunction order was passed, this Court cannot probe further into the matter with regard to the factual aspect stated by the learned lower appellate court.

The revisional court is not a court of appeal. The evidence existing should not be re-appreciated. However, this Court directs that only the roof casting should be permitted so that the property does not suffer from wastage, natural wear and tear. The construction was already complete upto the lintel level and in order to protect the construction, the roof casting should be allowed. No other construction shall be permitted. However, it is made clear that such construction on the suit property shall abide by the final decree to be passed in the suit. Moreover, the defendant nos.1 and 2 cannot claim any equity in respect of the construction. The defendant nos.1 and 2 shall not create any third party interest in respect of the said construction, either by sale or by inducting tenants. The construction shall abide by the final result in the suit. The defendant Nos.1 and 2 shall not claim any equity.

With the above directions, the order passed in Misc. Appeal No.9 of 2022, is modified.

However, this Court makes it clear that the construction should be in accordance with law and upon obtaining proper sanction from the sanctioning authority.

The validity of the construction is not decided here. This Court has not gone into the merits of the claims and counter-claims of the parties in the suit.

Accordingly, the revisional application is disposed of.

However, there will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)