

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 2950 of 2022

Jharna Rath

VERSUS

Rabindranath Bar & Ors.

For the petitioner:

Mr. Ganesh Srivastav, Adv.

Mr. Sukanta Das, Adv.

Mr. Snehasis Jana, Adv.

For the OP no. 1:

Mr. Rabilal Maitra, Adv.

Mr. Amlan Mukherjee, Adv.

Mr. Rajit Lal Maitra, Adv.

Judgment on: August 25, 2023

Biswaroop Chowdhury, J:

The petitioner before this Court is a defendant in a suit for partition and is aggrieved by the judgment and order passed by the Learned Additional District and Sessions Judge Fast Track 2nd Court Contai Purba Medinipore in Miscellaneous Appeal No. 05 of 2019, thereby affirming the order dated March

11, 2019, passed by the Learned Civil Judge (Senior Division) 1st Court Contai, Purba Medinipur in Title Suit No. 1018 of 2018.

The case of the petitioner may be summed up thus:

1. The opposite party no. 1 being plaintiff filed a suit for partition against the petitioner and other opposite parties before the Learned Civil Judge (Senior Division) 1st Court Contai Purba Medinipur being Title Suit No. 1018 of 2018.
2. The main case of the plaintiff/opposite party no-1 in the suit is as follows:
 - A. Gunadhar Bar was the co-sharer in 15-1/15 decimal plot of land jointly in 'KA' schedule suit plot of land. Gunadhar Bar died leaving behind his wife, four sons and five daughter and accordingly each of them got 1/10th share of the property of Gunadhar Bar by inheritance. The wife and four daughters gave their portion i.e. 10-41/75 decimal plot of land to Jogesh Sasanka, and the plaintiff/respondent became owner 31/2500 share jointly in the 'KA' schedule suit property.
 - B. Plaintiff/respondent transferred the said property to Kajal Rani Manna and Ananya Khatua by gift and sale. Ananya Khatua sold 3 decimals of property to Bibhuti Manna. Bibhuti and Kajal Rani Manna sold 6 decimals property to defendant No.1. Sasanka sold his 2 decimals property to petitioner/defendant. The petitioner/defendant

converted 8 decimals to 'Bastu' by conversion and took permission for construction of 2 storied building and constructed ground floor.

3. The petitioner/defendant appeared in the said suit by contesting the same by filing written statement.
4. The plaintiff also filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure. The plaintiff has claimed his ownership over 31/2500 share in the 'KA' schedule suit property and prayed for injunction against the defendant no.1/petitioner herein to restrain him from cutting down valuable trees, digging pond and from changing the nature and character of the suit property.
5. The plaintiff initially got an ad-interim order of injunction. The petitioner/defendant being aggrieved by the order moved an application under Order 39 Rule 4 of the Code of Civil Procedure praying for permission to complete, the building as per sanctioned building plan after modifying the order of injunction.
6. On 11/03/2019 the Learned Trial Court was pleased to pass the following order;

'Hence it is ORDERED that the application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure whereby the plaintiff prays for an order of temporary injunction is allowed on contest but without any costs. The application under Order 39 Rule 4 read with Section 151 of the Code Civil Procedure filed by the defendant no. 1 is rejected on contest but without any costs.

Both parties are directed to maintain status-quo in respect of nature, character and possession over 'KA' schedule suit property till disposal of the suit.

Thus both the petitions are disposed off on contest.

The plaintiff has filed one petition praying for extension of ad-interim injunction order supported by an affidavit. The said petition is rejected as it has become infructuous after disposing the application for temporary injunction.'

The petitioner/defendant no-1 being aggrieved by the Order dated 11-03-2019 passed by the learned trial Court preferred an appeal against the said order.

7. By Judgment and Order dated 30th July 2022 the Learned Appellate Court disposed the appeal preferred by the petitioner/defendant no-1 by affirming the order passed by the Learned Trial Court.
8. The petitioner being aggrieved by the Order dated July 30, 2022 passed by the Learned Additional District and Sessions Judge Fast Tract 2nd Court, Contai Purba Medinipore in Miscellaneous Appeal No. 05 of 2019, thereby affirming the Order dated March 11, 2019 passed by the Learned Civil Judge (Senior Division) 1st Court Contai, Purba Medinipore in Title Suit No. 1018 of 2018, has come up with this application under Article 227 of the Constitution of India.

It is contended by the petitioner that the Learned Appellate Court committed a grave error by affirming the order of the Learned Trial Judge by which an order of status-quo in respect of nature, character and possession over 'KA' schedule suit property was passed till disposal of the suit when the defendant No. 1/petitioner is making construction as per sanctioned plan over her purchased land which is surrounded by boundary walls.

It is further contended that both the Courts below should have considered that prima facie it appears that the petitioner/defendant No.1 is in occupation of a demarcated portion in the suit property which is surrounded by boundary walls and she had already started Construction after obtaining necessary sanction from the appropriate authority and if the petitioner is prevented from completing her unfinished construction but later on it is found that she had the authority to make said construction then her loss will be irreparable. It is also contended that both the Learned Courts below should have considered the fact that the defendant no-1/petitioner already started construction of her building over her purchased land of the suit plot and huge construction materials are lying in open space and the same will be damaged and wasted and as such the Trial Court as well as the Appellate Court below should have granted permission to the defendant no-1 to complete her building as per sanction plan. Pursuant to filing of this application notice was issued upon the opposite parties. Opposite Party no-1/plaintiff entered appearance and filed affidavit in opposition, and other opposite parties did not appear in this case.

The petitioner/defendant no-1 pursuant to filing of affidavit in opposition filed affidavit in reply.

Heard Learned Advocate for the petitioner and Learned Advocate for opposite party no-1 Perused the petition affidavits and materials on record. Learned Advocate for the petitioner submits that his client started construction in 8 decimal of demarcated and bounded portion of her purchased land and there are other constructions on the suit land within specified portions surrounded by boundary wall by other co-owners in Dag No.1. It prima facie goes to show that there was some sort of partition between co-sharers and they were allowed to raise construction in definite portion. Accordingly, the petitioner started to construct her residential house with necessary sanctioned building plan after purchasing of an ear-marked portion of land, and as such there will be undue hardship to the petitioner if she is not permitted to complete her construction by modifying the order of injunction.

Learned Advocate further submits that it prima facie appears that the petitioner/defendant no.1 is in occupation of a demarcated portion in the suit property which is surrounded by boundary walls and she had already started construction after obtaining necessary sanction from the appropriate authority, then if the defendant No.1/petitioner is prevented from completing her unfinished construction but latter on it is found that she had the authority to make said construction then her loss will be irreparable.

Learned Advocate also submits that while considering prayer for injunction Courts should take into consideration not only prima facie case balance of convenience and irreparable injury but also the conduct of the parties, particularly because grant of injunction is an equitable relief. Learned Advocate submits that the plaintiff who had kept quiet for a long time namely since 2003 when he transferred by registered deeds 6 decimal demarcated and specific land to his purchasers for valuable consideration and allowed the petitioner, herein to deal with the property exclusively by getting the land converted to bastu, obtaining sanctioned building plan and proceeding with construction to a considerable extent the Courts below ought not to have passed the order of injunction. Learned Advocate submits that the plaintiff/opposite party no-1 has no right to claim the demarcated plot of land over which the petitioner is making construction to be ejmali with him, particularly because he sold his share in the land after being demarcated and as such he is estopped from claiming any right and interest in that plot of land of the petitioner as ejmali with him. Learned Advocate submits that in view of the fact that the plaintiff who by registered deeds transferred demarcated and specified portion of land to the predecessors of the defendant No. 1 by representing in the deeds and the site plan attached to the said deeds demarcating and specifying the land as separate and partitioned from the rest of the land in the said plot No. 1 and the plaintiff not disclosing to the bona fide transferees that the land transferred was not partitioned the plaintiff was estopped and precluded by estoppel from setting up any claim in the suit contrary to the aforesaid that the land of the

defendant no. 1 was ejmali and as such the plaintiff had no prima facie case for trial. It is further submitted that the Courts below acted arbitrarily and perversely in holding erroneously that it was for the purchasers to make enquiry of the title and right of the vendor before purchase, when in the instant case the said proposition do not apply because in the instant case it is the vendor/plaintiff who is setting up claims contrary to his representation in the registered deeds made by him. Learned Advocate also submits that the defendant no – 1/petitioner has constructed upto plinth level after obtaining sanction plan and she may be allowed to complete her construction as per the sanction plan and she will not claim any equity in future, as the petitioner had already made huge investment and she will suffer irreparable loss and injury if after the plaintiff's claim is denied the costs of construction be enhanced exorbitantly. The following decisions are relied upon by Learned Advocate for the petitioner.

Mandali Ranganna and others.

VS

T. Ramachandra and others.

Reported in (2008) 11 SCC. P-1

Seema Arshad Zaher and others

VS

Municipal Corpn. Of Creator

Mumbai and others.

Reported in (2006) 5 SCC. P-282

Sailendra Nath Patra.

VS

Geetanjali Manna.

Reported in 2012 (2) CHN.(CAL) 436.

Satish Chandra Som and ors.

VS

Tarak Nath Mahapatra and ors.

Reported in (2004) (1) CLJ. Cal – 776.

Apart from relying upon Judicial decisions mentioned above Learned Advocate relied upon the Law Relating to Estoppel by representation (Third Edition) by Spencer Bower and Turner at Page – 4.

Learned Advocate for the opposite party no – 1/plaintiff submits that passing of the interim order of injunction by the Civil Judge (Senior Division) First Court Contai, under Order XXXIX. Rule 1 and 2 read with Section 151 of the Code of Civil Procedure is an innocuous one and if the defendant no. 1/petitioner would have continued the illegal construction and cutting of trees

beyond his portion which is the joint/ejmali property the intent and purport of the partition suit would have been frustrated. Learned Advocate further submits that it is an absurd proposition herein that the petitioner/defendant no.1 be allowed to complete the constructional work over the undivided/ejmali property prior to the partition and the submissions/argument of the petitioner/defendant no. 1 that he will demolish his construction in case of any adverse order is passed has no legs to stand upon. It is further submitted that mere purchase of an undivided portion of land prior to partition of the same does not confer any right upon the purchaser to start construction according to his will and whims over the said undivided property and mere issuance of a sanction plan by the Municipality does not confer any right title and interest upon the petitioner/defendant no-1 over any specific portion of undivided property and mere incurring of expenditure towards purchase of building materials cannot be a determining factor towards obtaining a favourable order in the Order 39 Rule 4 proceedings.

The following decisions are relied upon by Learned Advocate for the opposite party no-1.

Ramdas VS Sitabai and others.

Reported in (2009) 7 SCC. P 444.

Gajara Vishnce Gosavi.

VS

Prokash Nanasaheb Kamble and others.

Reported in (2009) 10 SCC. P-654.

Before considering the merits of this application and validity of the order passed by the Learned Courts below it is necessary to consider the guidelines to be followed in a partition suit regarding grant of injunction.

First of all a co-owner has an interest in the whole property and also in every parcel of it.

Secondly possession of the joint property by one co-owner is in the eye of law possession of all even if all but one are actually out of possession.

Thirdly a mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

Fourthly every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

Fifthly where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners it is not open to anyone to disturb the arrangement except with the consent of others or by filing a suit for partition.

In a suit for partition the normal principle is to maintain status-quo of suit property unless there are exceptional circumstances. In the instant case

the co-sharers have not raised any objection with regard to construction at 8 decimals of land which is part of the suit property but the plaintiff who have sold the said land has filed petition of injunction and the Learned Trial Court has allowed the prayer for injunction, which was affirmed by the Learned Appellate Court.

Upon perusal of the order passed by the Learned Trial Court and Learned Appellate Court it will appear that the following observation was made by the Learned Trial Court and Learned Appellate Court respectively regarding grant of injunction and rejection of plea of the petitioner/defendant no-1 about purchase of demarcated 8 decimals of land in the suit plot.

The Learned Trial Court made the following observation while allowing the prayer for injunction.

‘When the predecessor of the plaintiff was having undivided share in the suit plot, no right was accrued to the plaintiff to sell specific demarcated portion from the undivided suit plot. As per the Transfer of Property Act the purchaser should be bona fide and diligent. Before purchasing specific demarcated portion from the plaintiff the defendant should make enquiry as to whether the plaintiff has right to sell specific demarcated portion. From the record of rights and from the documents submitted by the plaintiff and defendant it is very clear that the ‘KA’ schedule suit property is undivided joint property of the plaintiff and defendants. The plaintiff has filed a suit for partition and during pendency of the suit if the defendant no-1 is permitted to

make construction by changing the nature and character of the suit property, the plaintiff will suffer from irreparable loss and injury.'

The following observation is made by the Learned Appellate Court.

'As per Section 8 of the Transfer of property Act no person can transfer any better title in a property than what he actually has in that property. It is Case of the appellant/defendant that the plaintiff/respondent sold specific and demarcated share in the joint, undivided 'ejmal' property in suit plot no right was accrued to the plaintiff/respondent to sell out specific demarcated portion to the defendant/appellant from the undivided suit plot.

Thus from the observations of the Learned Trial Court and Learned Appellate Court it is clear that the findings of the Learned Courts are on the basis of Section 8 of the Transfer of property Act and the principles of Uberrima Fide. However the Learned Courts failed to consider the provisions as laid down under Section 43 of the Transfer of Property Act and 'The Law Relating to Estoppel by Representation.'

In order to decide the relevance of Section 43 of the Transfer of Property Act and the Law relating to Estoppel by Representation it is necessary to discuss the said Provisions.

Section 43 of the Transfer of Property provides Transfer by unauthorized person who subsequently acquires interest in property transferred.

As per Section 43 where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property, and professes to transfer such property for consideration such transfer shall at the option of the transferee operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

In 'The Law Relation to Estoppel by Representation' (Third Edition) by Spencer Bower and Turner at Pg – 4. 'Estoppel by Representation' is defined as follows:

Where one person (the representor) has made a representation to another person (the representee) in words or by acts or conduct, or (being under duty to the representee to speak or act) by silence or inaction with the intention (actual or presumptive) and with the result of inducing the representee on the faith of such representation to alter his position to his detriment, the representor in any litigation which may afterwards take place between him and the representee, is estopped as against the representee from making or attempting to establish by evidence any averment substantially at variance with his former representation, if the representee at the proper time and in the proper manner objects thereto.' In Chapter II of the said book it is stated that the documents in which the representation may be contained may comprise everything.....be it deed, bond or other solemn instruments under

seal.....and any document may consists of words or figurers or it may be, plan diagram drawing flag or picture or anything whether written printed delineated or produced by any analogous process, which serves for the transmission and record of thought in a permanent form,'

It is well settled that a co-sharer of an immoveable property is legally competent to transfer his share or any interest in the immovable property but cannot transfer any specific portion of the undivided immovable property, by demarcation. However if a co-sharer sells any portion of an immoveable property by demarcation to a third party although the said sale can be challenged by other co-sharers but it will not be open for the co-sharer who sold portion of the property by demarcation to take the plea that the property was undivided, even if subsequently he gets the said specified portion after partition.

In the instant case the plea that the portion of property sold was undivided is not taken by any of the co-sharers but the co-sharer/plaintiff who transferred the said property by Gift and Sale. The said property changed hands by virtue of transfer by the transferees who obtained the same by way of transfer from the plaintiff. All along the plaintiff was silent regarding subsequent transfers but suddenly made objection after filing partition suit praying for injunction regarding the construction by petitioner/defendant no-1 when petitioner/defendant no-1 after obtaining sanction plan and renewing the same has already made part construction. It is to be noted in this regard that

none of the co-sharers except the plaintiff sought for injunction regarding construction made by petitioner/defendant no-1.

In the case of Prem Nath Khanna VS. State of Orissa reported in AIR – 2009. Ori – 166. The Hon'ble Court observed that it is wrong to say that Section 43 and its ingredients can be established, only before a proper Court of law. Section 43 of the T.P Act is not required to be established but the benefit of the same automatically accrues.

Although at this stage it would not be proper to go into details about the right of the petitioner in 8 decimals of land sold by the plaintiff to the petitioner but it is necessary to decide as to whether the petitioner should be permitted to make construction.

Although in a suit for partition Status Quo regarding nature and character of suit property should be maintained permission may be given in exceptional circumstances. Thus in order to decide under what circumstances permission can be given it is necessary to consider some judicial pronouncements. The Hon'ble Supreme Court in the Case of Mandali Ranganna and others VS. T Ramachandra and others reported in (2008) 11 SCC observed as follows:

'Grant of injunction is an equitable relief. A person who had kept quiet for a long time, and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The Court will not interfere only because the property is a very valuable one. We are not however

oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The Courts dealing with such matters must make all endeavors to protect the interest of the parties. For the said purpose application of mind on the part of the Courts is imperative contentions raised by the parties must be determined objectively.’

The Hon’ble Supreme Court further observed as follows:

26. ‘Rightly or wrongly constructions have come up. They cannot be directed to be demolished at this stage. Respondent – 7 is said to have spent three crore of rupees. If that be so in our opinion it would not be proper to stop further constructions.’

27. ‘We therefore are of the opinion that the interest of justice would be subserved if while allowing the respondents to carry out constructions of the buildings the same is made ultimate decision of the suit. The Court is requested to hear out and dispose of the suit as early as possible. If any third party interest is created upon completion of the constructions the deeds in questions shall clearly stipulate that the matter is sub-judice and all sales shall be subject to the ultimate decision of the suit. All parties must co-operate in the early hearing and disposal of the suit. The respondents must also furnish sufficient security before the Learned Trial Judge within four weeks from the date which for the time being is assessed at rupees one crore.’

In the case of Sailendra Nath Parra VS Geetanjali Manna reported in 2012(2) CHN.(CAL) 436. Hon'ble Division Bench of this Court observed as follows:

'At the time of hearing a petition under Order 39 Rule 4 of the Code of Civil Procedure there is no scope of deciding a party's title and/or share in the suit property. The Court has to see whether the ex-parte ad interim order of status-quo is causing much hardship to one of the parties justifying variation of the same. There is no denial that respondent plaintiffs have made out a prima facie case of having one-fourth share in the suit property. It was alleged that from the report of the learned Commissioner that several persons were found to reside on suit property by constructing buildings in demarcated portions. It also came out that appellant defendant No.6 purchased a demarcated portion through a registered kobala and started to make construction thereupon and that said construction came up upto linton height. It is true that at the time of final hearing in the suit it would be decided on evidence as to whether appellant defendant No.6 and some other defendants who are admittedly residing on suit land by making construction on a demarcated portions, had title and/or share in the suit property or not. Prima facie it appears that appellant defendant No.6 is in occupation of a demarcated portion in the suit property and that his demarcated portion is surrounded by boundary walls and that he already constructed upto linton height after obtaining necessary sanction from appropriate authority if appellant defendant no-6 is prevented from completing his unfinished construction but later on it is

found that he had the authority to make said construction then his loss will be irreparable. On the other hand, if appellant defendant No.6 is permitted to finish his unfinished construction at his risk and without permitting to claim any equity, and later on it is found that he had no authority to possess said land then plaintiff will be at liberty to get vacant possession of said land after demolition of said construction at the cost of the defendant No.6.'

In the case of Israel and Ors V Samser Rahman and Ors reported in VIII CWN 176, Sir Ashutosh Mookherjee as His Lordship then was, while delivering the judgment in a Division Bench was pleased to hold that in a case of injunction in respect of co-sharers' property as soon it is shown that the property is a joint property, the injunction is bound to be granted.

A Division of this Court upon considering the decision of Israel (Supra) in the case of Satish Chandra Som Vs Tarak Nath Mahapatra reported in 2004 (1) CLJ (cal) P-430 observed that Israel and ors (supra) is still holding field. But this ratio has to be applied having regard to the facts and circumstances of each case. Admittedly the time has changed. Now a suit may continue for generations. In case, it works hardship and equity demands, in that event the Court on sufficient grounds and reasons may pass appropriate order preserving the equity. In order to ascertain the question of equity one has to look into the facts pleaded and the conduct of the parties.

In the case of Ram Das VS Sitabai and others reported in (2009) 7 SCC. P. 444 the Hon'ble Supreme Court observed as follows:

Without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have a right to transfer his undivided share. Reliance in this regard may be placed to a decision of this Court in *M. V.S. Manikayala Rao v. M. Narasimhaswami*¹ wherein this Court stated as follows: (AIR p.473, para5)

“5. ...Now, it is well settled that the purchaser of a coparcener’s undivided interest in joint family property is not entitled to possession of what he has purchased. His only right is to sue for partition of the property and ask for allotment to him of that which on partition might be found to fall to the share of the coparcener whose share he had purchased.”

Upon perusal of the Judicial decisions relied upon it appears that the said decision lay down the guidelines for grant of temporary injunctions as well as the conditions under which the injunction can be varied, two decisions have discussed right of vendee to take possession in undivided property in transfer by co-sharer where Section 8, and 44 of the Transfer of Property Act is dealt with. The following cases deal with such points of Law, under Section 44 and 8 of the Transfer of Property Act:

Ram Das VS Sitabai and others

Reported in (2009) 7 SCC. P 444.

Gojara Vishnu Gosavi.

VS

Prokash Nana Saheb

Kamble and others

Reported in (2009) 10 SCC.P 654.

In the above two decisions the matter in issue was whether there being no physical formal partition of an undivided landed property a co-sharer can put a vendee in possession although a co-sharer may have a right to transfer his undivided share. The law involved in the said case was Section 44 and Section 8 of the Transfer of Property Act. In the instant case the dispute is with regard to right of a co-sharer disputing his own right of sale of undivided property to a third party by demarcation and there being no-objection by other co-sharers. Thus the law involved in this case is Section 43 of Transfer of Property Act, and the Law Relating to Estoppel by Representation. However with regard to the extent of rights of the plaintiff/opposite party no-1 to dispute his own right to sell portion of undivided property by demarcation to third party is already discussed in the above paragraphs. Now with regard to the question of grant of injunction and continuing the same further it is necessary to consider the issue irreparable loss and the conduct of the parties.

With regard to the issue of irreparable loss there cannot be any iota of doubt that where Construction of building is stopped mid-way for a long period due to pendency of suit costs of building materials will rise and the same will cause hardship to the person who is unable to construct. Moreover a person who purchases a land to construct building for residing will also be deprived of

his basic right as during the pendency of the suit he has to make alternative arrangement which may also cause inconvenience and hardship. As the instant suit is instituted in the year 2018, and pending for seven years and there is no certainty that the suit will be disposed within short period it would not be reasonable to continue with the order of injunction and restrain the petitioner from making construction.

Now with regard to the conduct of the parties it will appear, that the plaintiff/opposite party no-1 transferred 8 decimals of land which is under possession of the petitioner by gift and sale to Kajal Rani Manna and Ananya Khatua. Ananya Khatua sold 3 decimals property to Bibhuti Manna. Bibhuti and Kajal Rani Manna sold 6 decimals property to defendant No1./petitioner. Sasanka Sekhar Bar Opposite Party No-5 sold his 2 decimals property to petitioner/defendant no-1 who converted 8 decimals property to 'Bastu' by conversion. Thus it will appear that pursuant to transfer by plaintiff of 8 decimals of Land by gift and sale, the property changed hands by virtue of transfer and the plaintiff bought the said decimals of land in two phases with valuable consideration. Although it cannot be decided at this stage as to whether the purchase of petitioner was bona fide but as the petitioner is in possession of 8 decimals of land and commenced construction his prayer for completing the construction should be considered. Pursuant to purchase of the said lands in 2007 and 2009 petitioner applied for conversion of her purchased land from Jal to Bastu and the same was allowed. Upon obtaining Sanction plan from Municipal Authority the Petitioner started constructing building

which was not objected by the plaintiff/opposite party no-1 and other co-sharers. As after making part construction sanction plan lapsed the petitioner renewed the same after making necessary application, and the plaintiff/opposite party no-1 during this period chose to remain silent without making any objection before Municipal Authority or in Competent Court of Law. It is on filing the suit for partition in the month of July 2018 the plaintiff sought for injunction restraining petitioner/Defendant no-1 from making Construction on 8 decimals of land when part construction is already made. This conduct of the plaintiff in keeping silent for a long period and seeking injunction when part construction is already made by the defendant no-1/petitioner disentitles the plaintiff/opposite party no-1 to get injunction. Thus the order of injunction passed by the Learned Trial Court and affirmed by the Learned Appellate Court cannot be sustained in the eye of Law and the same should be modified.

Thus this Revisional Application stands allowed in part. Order dated 11/03/2019 passed by Learned Civil Judge (Senior Division) 1st Court Contai in T.S. No. 1018 of 2018 and Order Dated 30th July 2022 passed Learned Additional District and Sessions Judge Fast Track 2nd Court Contai in Miscellaneous Appeal 05/2019 stands modified to the extent that the Petitioner/Defendant No-1 is permitted to make construction on the 8 decimals of land purchased by him strictly as per sanctioned plan. However this construction is subject to the result of the suit and the petitioner will not be entitled to claim any equity upon completion of construction and the petitioner

shall not transfer alienate or part with possession of the building constructed till the disposal of the suit.

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

(Biswaroop Chowdhury,J)