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Ct. No. 04

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F.M.A.1425 of 2022
CAN 1 of 2022

Badsha Sk. & Anr.
Vs.
Sefali Bibi & Ors.

Mr. Ramdulal Manna,
Ms. Manju Manna,
Mr. Sayan Mukherjee.
... for the appellants.
Mr. Amitabha Ghosh.
... for the respondent no. 1.
Mr. Nirmalendu Patra.
... for the respondent nos.
3 to 50.

It is a sordid state of affairs that an internal communication between the Registrar of the High Court with the concerned Judicial Officer is made available to the litigant. On the last occasion a photocopy of the Memo No. 45/FMA was handed over to us which in our opinion could not have been given to the litigant for which we passed a direction upon the learned Counsel for the appellants to seek explanation from his clients in this regard.

It was communicated to us that his clients entrusted the clerk to obtain a copy of the judgement and order dated 11th September, 2018 passed in FMAT 689 of 2018 and handed over the said order along with the said Memo. Since it is a part of the Court's record and a photocopy without being certified by a competent authority is relied upon before us, we feel that it is a high time where such practice should be curbed or deprecated and steps should be taken against the officer or the employee responsible in this regard.

We, therefore, direct the District Judge, Malda to make an enquiry in this regard and fix the responsibility on a person, who is found guilty thereof

and appropriate steps should be taken against him as permissible in law.

Let the photocopy of the said Memo, which was handed over to this Court and was kept in a sealed cover, be sent to the District Judge for compliance of the directions as above.

Registrar General is directed to send the said document contained in a sealed cover and to communicate this order to the District Judge, Malda immediately.

In a partition suit, an application for temporary injunction was disposed of directing both the parties to the suit to maintain status quo with regard to possession and enjoyment of the suit property till the disposal of the suit.

Though it is sought to be contended by the appellants that the averments made in the plaint would reveal that the plaintiff purchased a portion of the larger property with specific demarcation which implies that the property is no longer a joint property, but it appears from the stand of the plaintiff that there was no demarcation ever made and the property remained a joint property occupied and possessed by the respective co-sharers and/or co-owners; the portion shown in the respective deeds executed in their favour by the rightful owners.

According to the appellants, nearly 54 persons have purchased the respective portions of the larger property being the subject matter of the suit and using, occupying and enjoying their respective portions by constructing a structure thereupon. It is submitted that the moment the appellants started to make construction in a portion occupied and possessed by them, the plaintiff/respondent had filed the instant suit for partition and by the order impugned the entire

construction has been put at halt.

Interestingly, the learned Counsel for the plaintiff/respondent vociferously submits before us that the order of status quo passed by the Trial Court does not impinge upon the construction made by the appellants, but the construction should not encroach upon the portion occupied by her or damage the existing structure.

We are not inclined to go deep into the aforesaid aspect as the application for injunction is to be decided on the basis of the averments made in the pleadings filed by the parties and should not be decided on the ipsi dixit of the submissions made at the Bar. Indubitably the property is undivided and the plaintiff/respondent has come up for separation of shares held by the respective co-sharers in respect thereof. We have been taken to the photographs annexed to the application indicating the extent of the constructions already made which appears to us to be substantial in nature and certain further constructions are required for making it habitable.

Whether the construction has been made strictly in conformity with the statutory provision or not is a separate issue to be dealt by the statutory authority constituted in this regard, as we do not delve to go into the aforesaid aspect at this stage but proceed to decide solely on the basis of the pleadings and the submissions advanced by the plaintiff/respondent.

Each co-sharer has a right in every inch of the property and by making an arrangement they can occupy certain portion thereof for their enjoyment. Passing a order denying a co-sharer to make construction on the joint property in a blanket form should not be encouraged, as the Court must record the reasons therefor; more particularly when a

substantial construction has come up at the time of disposal of the application for temporary injunction.

An inspiration can further be drawn in this regard from the observations of the Apex Court in case of *Mandali Ranganna & Ors. vs. T. Ramachandra & Ors* reported in (2008) 11 SCC 1; wherein it is held :

“Rightly or wrongly constructions have come up. They cannot be directed to be demolished, at least at this stage. Respondent no. 7 is said to have spent three crores of rupees. If that be so, in our opinion, it would not be proper to stop further constructions.”

The construction has come up at a substantial level and, therefore, any order stopping the construction would have an unjust enrichment on a right of a co-sharer in respect of the joint property at the behest of another co-sharer who have been enjoying a structure standing on the undivided property.

However, we cannot overlook the fact that the suit for partition is at the nebulous stage and a person who made the construction may claim equity at the time of final decree.

The aforesaid aspect can be sufficiently take care of, if the defendants/appellants are denied of any equity to play at the time of final decree to be passed in the said partition suit.

Accordingly, the impugned order is modified to the extent that it would not affect the right of the defendants/appellants to complete the construction subject however to due adherence of the statutory provisions applicable in this regard and such construction would not enure to the benefits of the appellants nor they shall be entitled to claim any equity at the time of final decree to be passed in the said suit.

With the above observations, the appeal and connected application are disposed of.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)