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*In The High Court At Calcutta
Civil Revisional Jurisdiction*

C.O. No. 388 of 2024

**Bhagirath Rajbanshi, since deceased, represented by
his heirs and legal representatives, namely, Arati
Rajbangshi & Anr.**

Vs.

Sahadeb Ghosh & Ors.

Mr. Amrita Lal Dhar,
Ms. Reema Coomar,
Mr. Tanmoy Saha ... For the petitioners.

This is an application under Article 227 of the
Constitution of India.

The order dated December 13, 2023 passed by the
learned Civil Judge (Senior Division) at Kandi, District:
Murshidabad, in *Partition Suit No. 122 of 2023*, is under
challenge.

The petitioners are the plaintiffs of the connected
partition suit.

The learned Trial Judge by the order impugned has
allowed the prayer of the defendant no. 1 to execute
construction work on the portion of the joint property
which is under his possession.

Learned advocate for the petitioners submits that the
plaintiffs are enjoying an order of injunction restraining the
defendants not to disturb their possession over the suit
property; during the subsistence of such an order of
injunction, the learned Trial Judge should not have
permitted the defendant no.1 to carry out such
construction work over the suit property, particularly when
such construction work is going on without any sanction
plan.

Heard learned advocate for the petitioners, perused the materials on record.

It appears from the order impugned that there is one Commissioner's report in the record which depicts separate demarcated possession of the plaintiffs and the defendant no.1 in the suit property; besides, the learned Trial Judge, considering the undertaking of the said defendant that if the permission as prayed for, is granted, he would not claim any equity in future and in the event in the final decree, the constructed portion does not fall within his allotted share, he would remove the same, has granted the said permission. So far the allegation that the defendant no.1 is carrying out the construction work without the sanction plan is concerned, it is always open for the plaintiffs to lodge a complaint with the concerned Municipal Corporation.

A co-sharer, to the extent of his share, is entitled to raise construction over the joint property which is under his possession. The impugned permission is not offending the order of injunction as the parties are in possession of specific portion of the suit property; however, in the event the permission is used to disturb the possession of the plaintiffs, they are liberty to take appropriate steps in the suit.

The order impugned, for the aforesaid reasons, does not call for any interference.

C.O. 388 of 2024 therefore is dismissed without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)