

19.03.2024
Court No. 19
Item no.38
CP

C.O. No. 2265 of 2023

Snehalata Manna & Ors.
Vs.
Surjendu Bikash Maity & Ors.

Mr. R. N. Mahato
Mr. Aritra Shankar Ray

....for the petitioners.

1. The revisional application arises out of an order dated September 23, 2022, passed by the learned Civil Judge (Senior Division), 2nd Court at Midnapore in Title Suit No. 153 of 2017.
2. It appears that the suit had been renumbered and was originally filed sometime in 2006. The petitioners filed an application in 2022 praying for an order from the court permitting completion of an unfinished construction on the suit property. The ground taken was undue hardship which was being faced by the petitioners due to such unfinished construction.
3. The learned court rejected the said application on the ground that there was nothing on record to show that the construction had started before the injunction order was passed. The learned court was of the opinion that if the defendants were allowed to complete the

construction, it would cause prejudice to the plaintiffs, specially because the plaintiffs had contended before the learned court that the construction had taken place in violation of the order of injunction.

4. Mr. Mahato, learned advocate appearing on behalf of the petitioners, has referred to the sanction granted in 2011, by the concerned gram panchayat. The plan has also been annexed at page 16, which bears the signature and seal of the pradhan. He submits that the documents would itself indicate that the construction had been initiated soon after the sanction had been granted and before the order of injunction was passed. It appears from the record that the application for temporary injunction was filed sometime in December, 2006. Both the parties were directed to maintain status quo with regard to the nature, character and possession of the suit property till the disposal of the suit. Such order was passed on September 14, 2012. The court recorded the rival contentions of the parties that they had exclusive right, title and possession over the property in question. At that stage, the defendants had not submitted before the court that they had already started

construction on the property in question. Such issue was not even urged before the learned court. The defendants willingly accepted the order of status quo with regard to the nature, character and possession of the property in question. The order attained finality and the suit proceeded. After ten years, the defendants have come up with the plea that a construction had been started before the order of status quo was passed, and should be allowed to be completed. From the records and conduct of the parties, the contention of Mr. Mahato cannot be accepted, specially because there is a finding of fact by the learned court below.

5. Under such circumstances, no order can be passed. The revisional application is dismissed.
6. The petitioner is at liberty to pray for expeditious disposal of the suit.
7. The decision cited by Mr. Mahato in the matter of Sri Sailendra Nath Patra vs. Smt. Geetanjali Manna & Ors., reported in (2012) 2 CHN 436, will not apply in the present case.
8. The said order was passed in a situation where a co-sharer of a property, who had an admitted one-fourth share in the property, was allowed to construct in view of the inordinate delay in disposal of the suit and the suffering caused.

Taking note of the commissioner's report, inter alia, stating that several persons were found residing in the property by constructing buildings in their demarcated portions, construction without claiming any equity was allowed.

9. This is not such a case. Rival parties are claiming right, title and interest in the property in question and an order of status quo was passed upon hearing both the parties on contest, in 2012.

10. The learned court is directed to make a sincere endeavour to dispose of the suit expeditiously, preferably within a year from the next date fixed.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)