

WPA 22887 of 2023
Sujan Bandhu Manna
Vs.
The State of West Bengal & Ors.

Mr. Soumen Kr. Dutta,
Mr. Partha Sarathi Basu
Mr. Subham Dutta,
Sk. Sayan Uddin

...for the Petitioner

Mr. Amitava Chowdhuri,
Mr. Samrat Pal

...for the State

Mr. Arindam Ghosh

...for Respondent No. 7

The petitioner claims to be a co-sharer in respect of Plot No. 128, Khatian No. – 474, Mouza – Mashagan, J. L. No. 182, Dist. Purba Medinipur.

It appears that respondent no. 7 filed a suit for partition being T. S. No. 174/2011 before the learned Civil Judge (Sr. Division), 1st Court at Kanthi, Dist.- Purba Medinipur against the petitioner and other co-sharers of the said property. The suit was decreed in preliminary form declaring his 1/48th share over the relevant property. Admittedly, the final decree has not yet been drawn up. It appears that in connection with the said suit, respondent no. 7 filed an application for injunction under Order 39, Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908. The said application was taken up for hearing before the learned Civil Judge (Sr. Division) dated September 12, 2013, when the learned Judge directed both

the plaintiffs and the defendants to maintain the status quo in respect of the suit property. Thereafter the writ petitioner, who was defendant no. 4 in the suit, filed an application under Order 39, Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 for vacating the interim order. The said application filed by the petitioner was allowed by the learned Civil Judge (Sr. Division), 1st Court, Contai, Purba Medinipur by an order dated June 15, 2023. The learned Judge in the trial court, vacated the interim order and allowed the writ petitioner to make construction of a residential building over the relevant scheduled property, subject to the permission given by local Gram Panchayat.

Learned advocate appearing for the petitioner submits that after the said order, he made repeated representations before Kusumpur Gram Panchayat for a permission to undertake the construction. Till date, the said Panchayat has not granted any such permission to the petitioner.

A co-sharer's right to carry out a construction in a jointly owned property has been decided by a Division Bench of this Court in *Shrimati Satu Bala Dassi & Ors. Vs. Chaturanjan Saha & Ors.*, reported in (2014) 3 WBLR (Cal) 318.

The relevant part of the said judgment is quoted below:

“14. Possession by one co-sharer is possession by the others. However, a co-owner is not entitled to an order of injunction restraining another co-sharer from exercising his right in the common property absolutely and simply on the ground of his co-ownership and without reference to the amount of damage sustained or to be sustained by one side or the other from withholding injunction. While a co-sharer is entitled to object another co-sharer’s exclusive appropriation of land to the detriment of other co-sharers, the question as to what should be granted to the plaintiffs in the event invasion of his right will depend the circumstances of each case.

15. In this case, by the order impugned, the defendant co-sharers were allowed to erect structure subject to the ultimate suit.

16. Moreover, it appears that there are existing structure and, therefore, neither the defendant nos. 1 & 2 nor the defendant no. 13 could be restrained from making construction merely because the said property has not been divided by metes and bounds.

17. It is pertinent to note here that the parties are possessing their respective demarcated portions from the time of the preparation of revenue settlement of record of rights and are exercising their absolute right in respect of their specific areas. 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.”

In view of the aforesaid legal proposition, I am of the view that Kusumpur Gram Panchayat ought to have granted necessary permission to the petitioner for raising

the construction.

Accordingly, this writ petition is allowed with a direction upon the Kusumpur Gram Panchayat, Contai-III, Purba Medinipur to grant necessary permission for undertaking the construction in terms of the order dated June 20, 2023, passed by the learned Civil Judge (Sr. Division), 1st Court, Contai, Purba Medinipur in Title Suit No. 174/2011 within a period of 15 days from the date of communication of this order.

WPA 22887 of 2023 is allowed

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)