

Item No. 5
28.02.2024
Court. No. 19
GB

C.O. 3978 of 2023

Pranab Kumar Dutta & Anr.
Vs.
Bani Israil Sekh & Ors.

*Mr. Amal Krishna Saha,
Mr. Indranil Chandra,
Mr. Debnath Mahara,
Mr. Abhirbab Sarkar*

...for the Petitioners.

*Mr. Partha Sarathi Das,
Md. Hafiz Ali,
Mr. Shanta Sarkar,
Mr. Debjyoti De*

...for the Opposite Parties.

1. The revisional application arises out of an order dated August 22, 2023, passed by the learned Civil Judge (Senior Division), Kandi, Murshidabad in Partition Suit No.287 of 2022.
2. By the order impugned, the learned court allowed an application under Section 151 of the Code of Civil Procedure thereby allowing the defendant no.1 to complete the plastering work, colouring of the walls, fixing of the doors, windows, shutters, etc. Completion of the flooring, water and electricity connection, etc., were also allowed so that the portion over which the construction was incomplete, could be made habitable.
3. The defendant no.1 filed the application under Section 151 of the Code of Civil Procedure supported by an affidavit. The contention was that he was the owner in respect of 9 decimals of land in Plot Nos. 2341 and

3517. After obtaining valid sanction from the municipality, a multistoried building had been constructed but a part of the same was incomplete. In order to complete the said construction, the defendant no.1 purchased sand, stone, cement and other building materials. Due to the order of status quo, the building materials were lying waste and the defendant no.1 was not in a position to complete the construction.

4. The defendant no.1 undertook that if the court permitted the defendant to complete the construction, he would not claim any equity and would abide by any decision for apportionment of the undivided property. The plaintiff raised severe objection to the said application and submitted that the construction was being raised in violation of the municipal laws and by deviating from the municipal plan. On an earlier occasion, a similar prayer of the defendant who wanted to construct the third floor, had been rejected by the said court.
5. Upon perusal of the local inspection report, it is revealed to the court that the building materials were lying and the building was incomplete. In the opinion of the court, if the defendant no.1 was permitted to complete his existing construction, then no further prejudice would be caused. Balance of convenience was in allowing such construction. Otherwise, the building materials would be wasted. Thus, the prayer

for completion of the unfinished building was allowed and the court directed that the court reserved the right to pass an order for demolition of the said structure in case the same did not fall within the share of the defendant no.1, after completion of the suit.

6. This Court finds that the learned court has completely misunderstood the provisions of the West Bengal Municipal Act, 1993. The law provides that unless a construction is sanctioned as per the municipal Rules, the question of allowing such construction or even allowing completion of an unfinished construction would not arise. The court did not have any jurisdiction to permit any construction that was contrary to law. The court also lost sight of the earlier order by which a similar application was dismissed, on the court finding that the plan sanctioned by the municipality only permitted construction upto the second floor. The construction of the third floor was not allowed. It was also on record that a stop work notice was issued by the municipality.
7. According to the earlier order, only to regularize an illegal construction, permission was being sought for from the civil court so that the construction would get the stamp of legality.
8. The law is well-settled. An unauthorized construction cannot be permitted. The defendant no.1 could not produce any document to show that the third floor had been sanctioned by the municipality. Thus,

permitting the construction of the third floor or completion of the third floor or making the third floor in a habitable condition, were all contrary to the municipal law and unauthorized.

9. Under such circumstances, the order impugned is set aside. With regard to the contention of the learned advocate for the petitioner that no equity will be claimed, this Court finds that such contention does not make any sense at all, in view of the fact that the construction sought to be completed had been found to be, prima facie, illegal by the municipal authorities and also by the learned judge on an earlier occasion. There was no sanction for construction of the third floor.
10. However, this order would not affect the right of the defendant to pray before the learned court for repair of the existing sanctioned area, if the situation so arises and the learned court shall deal with the same in accordance with law upon hearing all the parties.
11. Accordingly, the revisional application is disposed of.
12. However, there will be no order as to costs.
13. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)