

Ct No.10  
AD- 19  
25.09.2025  
(SSS)

CO 1288 of 2024

Sri Prafulla Kumar Jana and Ors.  
Vs.  
Sri Bholanath Jana

Mr. Krishna Das Poddar,  
Mr. Sujit Bhunia,  
Ms. Mandira Barman  
.....for the petitioners.

Mr. Tanmoy Mukherjee,  
Mr. Soumyajit Das Mahapatra,  
Mr. Souvik Das,  
Ms. Madhurai Sinha,  
Ms. Upasana Banerjee  
...for the plaintiff/opposite party.

1. The defendant in a partition suit has preferred the instant revisional application against the portion of an order whereby the application of the plaintiff/opposite party for making a *pucca* construction of a new building on the suit property was allowed. By the self-same order, the defendants/petitioners were permitted to repair their tin shed structure situated on the suit property. The challenge, obviously, has been thrown against the portion of the order whereby the plaintiff/opposite party was permitted to make the pucca building and not the other part of the order.

2. Learned counsel appearing for the petitioners places reliance on an order dated January 6, 2023 passed by the learned Trial Judge, whereby the parties were directed to maintain status quo in respect of the suit property so far as its nature, character, ownership and possession was concerned, till disposal of the suit. It is submitted that the impugned order, so far as it permits the construction of a *pucca* building on the suit property by the plaintiff, is clearly violative of the status quo order passed by the learned Trial judge himself.

3. That apart, the defendants/petitioners have challenged the title of the plaintiffs in the suit. It is contended that although given an opportunity, the plaintiff failed to produce the first link in the chain of deeds on the basis of which title is claimed by the plaintiff/opposite party. The plaintiff/opposite party alleges that he has purchased from a vendor, who, in turn, purchased through a link of transfers, originating from a transfer by the father of the defendants/petitioners.

4. However, such purported deed, executed by the father of the petitioners, has not been produced by the plaintiff despite getting such opportunity. Thus, in the absence of *prima facie* proof of title, the plaintiff could not be permitted to make *pucca* construction.

5. Learned counsel appearing for the plaintiff/opposite party submits that at the stage of grant of status quo, the learned Trial Judge came to a *prima facie* observation that the plaintiff has established his ownership and possession over 25 decimals of land in the suit property. In the impugned order as well, such possession, from the year 1993, has been recorded by the learned Trial Judge.

6. Thus, it is clear that at least the plaintiff is in possession of a substantial portion of the suit property whereas the defendants are in occupation of the other portions.

7. It is contended that the previously prevailing strict legal proposition against construction being permitted to be made by co-sharers on a joint property, as laid down in the judgment of *Israil vs. Samser Rahaman*, reported at XVIII CWN 176, has since been diluted. In support of such contention, learned counsel cites a coordinate Bench judgment in the matter of *Satish Chandra Som & Ors.* reported at 2004 SCC OnLine Cal 2 as well as another coordinate Bench judgment in the matter of *Sanghati Pal vs. Prakash Adhuryya & Ors.*, reported at 2009 SCC OnLine Cal 928.

8. Learned counsel submits that the defendants/petitioners would not be affected

adversely in any manner since the learned Trial Judge, in the impugned order, has categorically mentioned that the plaintiff/opposite party shall not claim any equity in the construction to be made by the plaintiff.

9. In any event, since the construction has been subjected to the final determination of suit, no harm would befall the petitioners if such construction was made by the plaintiff/opposite party in his occupied portion.

10. Upon a consideration of the respective arguments of the parties, it is clear that a *prima facie* opinion was expressed by the learned Trial Judge while passing the status quo order on January 6, 2023 that the plaintiffs have shown their ownership and possession over the suit property.

11. It is well-settled that at the stage of grant of injunction, the court is not to consider “*prima facie* title” but only whether a “*prima facie* case”, that is, a triable issue has been made out.

12. In the absence of any challenge to the status quo order passed by the learned Trial Judge, the question as to the title of the plaintiff cannot be gone into at this stage.

13. However, the defendants/petitioners are justified in their arguments on two counts.

14. First, the learned Trial Judge ought not to have passed an order permitting the plaintiff/opposite party to make substantial *pucca* construction of an entire building on the suit property in the teeth of the status quo order passed by the trial court itself. The prayer portion of the application filed by the plaintiff/opposite party, which prompted the passing of such order, does not disclose any prayer for modifying and/or vacating the status quo order in any manner. As such, the parameters of Order XXXIX Rule 4 of the Code are not applicable to the present case. Thus, the impugned order, to the extent that the same permits the construction of a building in the teeth of the subsisting status quo order, is bad on such count.

15. Secondly, the judgments cited by the plaintiff/opposite party are not apposite in the present context. In *Satish Chandra Som (supra)*, the Division Bench had observed in the facts of the case that when construction was made by a particular party, none of the other co-sharers raised any objection. Only when the appellants were making construction, objection was being raised. But this question, it was held, had to be dealt with having regard to the facts and circumstances of the case. Although it was held that times have changed since *Israil (supra)* and a suit may continue for

generations, the court considered the hardship and equity demands in the context of the particular case. In the said report, the Division Bench also considered that the trial court overlooked that the plaintiff purchased 1/14<sup>th</sup> share measuring about half decimal of land which was too insignificant and it is a principle of partition that when a property cannot be partitioned effectively, the same may be compensated by owelty money. The same was, thus, one of the considerations for the observations as recorded therein. Furthermore, in paragraph no. 8 of the judgment, the Division Bench had observed that by the conduct of the parties, it was evident *prima facie* that there was a partition when one Monorama Pattanaik, a co-sharer, was allowed to raise construction and surround her occupation by a boundary wall which included the portion purported to be purchased by the other parties.

16. In the present case, the defendants/petitioners, let alone admitting partition by their conduct, are categorically disputing the title of the plaintiff/opposite party in the suit property itself. Moreover, it is not the case of either of the parties that the defendants/petitioners have constructed a *pucca* building in their portion and are objecting when a similar construction is sought to be made by the plaintiff/opposite party. Rather, the

defendants/petitioners are content with repairing their tin-shed structure, while the opposite party seeks to build a *pucca* building instead of his existing structure similar to the defendants/petitioners.

17. Insofar as *Sanghati Pal* (supra) is concerned, the Division Bench observed therein that it was evident from the report of the learned Commissioner that there were five complete buildings of other co-sharers and the defendant no. 11, that is the appellant before the Division Bench, had now raised construction up to the lintel level. It was also recorded that a contention was raised that no objection was raised when the construction was started till it reached the lintel level.

18. It was further considered that apart from the appellant therein, the other co-sharers were in possession of their complete separate respective buildings.

19. In gross contra-distinction therewith, in the present case the defendants/petitioners are not in occupation of separate residential buildings in their occupied portion of the suit property; rather, they dispute even the title of the plaintiff/opposite party.

20. The factual considerations in the above judgments, thus, are not at all applicable to the present case.

21. Although learned counsel for the plaintiff/opposite party has handed over certain photographs showing that the construction has partially been raised insofar as the ground floor is concerned, the said construction, as opposed to the cited judgments, has been made in the interregnum, taking advantage of the time-gap between the grant of stay by this court and the passing of the order impugned herein.

22. Thus, it is not such a case that the defendants/petitioners sat idle before the inception of the suit and permitted such construction even before the suit was filed.

23. The plaintiff admits that the defendants are also in occupation of a portion of the property by constructing a tin-shed structure whereas the plaintiff claims to be in occupation of another portion of the property. Till date, before the passing of the impugned order, there was no *pucca* construction on the suit property.

24. It is well-settled that the endeavour of the court will be to maintain the property *in statu quo* during pendency of the suit, particularly a partition suit, where the respective possession of the parties is to be taken into account while finally allocating shares. As such, without any immediate justification or urgency, this court does not find any reason as to why the

equities, balanced against each other, would permit the plaintiff/opposite party to construct a *pucca* building on the suit property, thereby changing the entire nature and character of the suit property in gross contravention of the subsisting status quo order, whereas initially, at the time of filing of the suit, there were only a temporary structures on the suit property.

25. Hence, the impugned order is bad on such account as well.

26. However, we are not oblivious to the fact that already a portion of the construction has been erected by the opposite party, pursuant to the order of the trial court and not unlawfully. As such, the said construction cannot be directed to be demolished at this juncture. In any event, the plaintiff undertook before the trial court that the plaintiff/opposite party shall not claim any equity in the construction and the same would be subject to the final determination of the partition suit.

27. Accordingly, CO No. 1288 of 2024 is allowed, thereby setting aside the portion of the impugned order, bearing Order No. 19 dated February 22, 2024 passed by the learned Civil Judge (Senior Division) at Kharagpur, District – Paschim Medinipur, to the extent that the plaintiff/opposite party was permitted to make a new *pucca* building in the suit property.

28. However, it is made clear that this court does not interfere with the other portion of the impugned order whereby the defendants/petitioners were permitted to repair their tin-shed structure situated on the suit property without changing its basic nature and character.

29. It is further clarified that the construction already made by the plaintiff/opposite party on the suit property pursuant to the order impugned herein shall not be directed to be demolished during the pendency of the suit merely by dint of the portion of the impugned order allowing such construction being set aside. However, the plaintiff/opposite party shall not claim any equity in such construction and the said construction shall be subject to the outcome of the suit.

30. There will be no order as to costs.

31. The parties and all concerned shall act on the server copy of this order, duly downloaded from the official website of this court.

(Sabyasachi Bhattacharyya, J.)