

S/L 3
02.05.2025
Court No.17
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 1367 of 2024
[Assigned]

Abdul Laskar
Vs.
Hafizul Laskar & Ors.

Mr. Sabyasachi Chatterjee
Mr. Aritra Ghosh
Mr. Badrul Karim

...for the Petitioner.

Mr. Sounak Bhattacharyya
Mr. Sounak Mandal

...for the Opposite Parties.

The defendant no.1 in a suit for partition is the petitioner of the instant application under Article 227 of the Constitution of India which is directed against the Order No. 12 dated January 8, 2024 passed by the learned Civil Judge (Senior Division) at Diamond Harbour, District: 24-Parganas (South) in the said suit being *Title Suit No.119 of 2022*.

A fund has been sanctioned in favour of the petitioner under the *Pradhan Mantri Awas Yojna (PMAY)*. The petitioner intends to exploit the said fund to put up a new construction in the portion of the suit property which is allegedly under his possession.

He, accordingly, had applied before the learned Trial Judge praying necessary permission for such construction. The learned Trial Judge, by the order impugned, has rejected the said application, *inter alia*, on the grounds that there is a subsisting order of injunction against the defendant no.1 in the suit.

Mr. Sabyasachi Chatterjee, learned advocate for the petitioner submits that unless the permission as prayed for is granted, the sanctioned fund cannot be exploited and the money would return.

Mr. Bhattacharya, learned advocate for the opposite parties submits that summons are yet to be served upon all the defendants in the suit; besides, to consider the prayer of the petitioner, the subsisting order of injunction directing the defendant no.1 to maintain *status quo* with regard to nature and character of the suit property needs to be varied and/or modified but the petitioner has not yet prayed for it.

Heard learned advocate(s) for the parties, perused the materials-on-record.

The petitioner, to get the permission, is required to prove that such construction is within his share and is not on the best portion of the joint property; besides, if he is allowed to make such construction, would not claim any equity and the construction is subject to the result of the suit. These requirements however are lacking in the application praying such permission; moreover, the subsisting order of injunction needs to be suitably varied and/or modified, but the petitioner has not prayed for such relief. The order impugned therefore does not call for any interference.

However, this order shall not prevent the petitioner to file a fresh application and to take appropriate steps in the suit in aide of such application. In the event a fresh application is filed, the learned Trial Judge shall decide the same in accordance with law

CO 1367 of 2024 is thus disposed of without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

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.)