

17.09.2025
Item No.31
Ct. No.01
Saikat

FMA/930/2025
with
IA NO: CAN/1/2025

KARTICK CH DE
VS.
ASISH DEY AND ORS.

Mr. Prantick Ghosh, Adv.
Mr. Siddhartha Sarkar, Adv.
Mr. Akash Ghosh, Adv.

...For the Appellant

Mr. Malay Bhattacharya, Adv.

...For the Respondents

1. In a suit for partition the learned trial court while disposing of the injunction application has, *inter alia*, directed that the that the defendant Nos.10 to 12 are also hereby restrained from changing the nature and character over the vacant land lying in the 'Ka' schedule property till the disposal of the suit.
2. The learned counsel appearing for the appellant/plaintiff has submitted that the said order should have covered both the vacant and illegal construction raised by the defendant Nos.10 to 12. Our attention is also drawn to an order passed by a co-ordinate Bench dated 18th June, 2025, observing that the said defendant shall not raise any construction without any sanctioned building plan.
3. The learned counsel for the said defendants has submitted that the construction has been raised on the basis of a sanctioned plan.

4. Ordinarily in a suit for partition, constructions are not allowed excepting in a situation where it appears that a party is in possession of a demarcated portion and has been enjoying the said property for some time and for better enjoyment such co-sharer might be permitted to raise construction without creating any equity.
5. Similar issues came up for consideration earlier and following the judgments in ***Shrimati Satu Bala Dassi & Ors. vs. Chaturan Saha & Ors.*** reported in ***(2014) 3 WBLR (Cal) 318*** and in the case of ***Sanghati Pal vs. Prakash Adhurya & Ors.***, reported in ***2009(2) CLJ (Cal) 153***, a co-sharer was permitted to raise construction or finish the construction according to a sanctioned plan without creating any equity.
6. The only modification made in the impugned order is that any construction raised by the defendant nos.10 to 12 in accordance with the sanctioned plan shall not create any equity in their favour.
7. With the aforesaid modification, the appeal as well as the pending application are disposed of.
8. Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

[SOUMEN SEN, C.J.(ACTING)]

(APURBA SINHA RAY, J.)