

10.09.2025
SL No.12
Court No.16
(gc)

**FMAT 217 of 2025
CAN 1 of 2025**

**Manik Mandal @ Manik Chandra Mandal & Anr.
Vs.
Jaharlal Mandal & Ors.**

Mrs. Kakali Samajpaty,
Mr. Prahlad Chandra Ghosh,
Mr. Subir Hazra,
Ms. Sabina Khatun
...for the Appellants.
Ms. Soma Kar Ghosh,
Ms. Suparna Paul,
Ms. Shilpi Ghosh
...for the Respondents.

1. The appeal is directed against the order dated 2nd June, 2025 by which the defendant no.1 was permitted to complete part construction with condition that he would not claim any equity over such portion or plot of land and would also demolish such construction at his own expense, if ordered by the Trial Court at the conclusion of the trial. In a suit for partition, ordinarily, a Co-sharer has a share in every inch of the property until partition by metes and bounds takes place. However, in a situation where one of the co-sharers has already started raising construction over and in respect of the plot of land or area in which such co-sharer is in occupation, the Courts have ordinarily granted liberty to such

co-sharer to raise the construction subject to the rider that the said co-sharer shall not claim equity over and in respect of such construction and may have to demolish the portion constructed in the meantime. It would mean that such construction would not give any unfair advantage to such co-sharer vis-à-vis the other co-sharer and at the conclusion of the partition, such co-sharer may have to forgo or may be deprived of the benefit of such construction or claim any equity over such construction at the time when the partition is required to be effected. The plaintiff also appears to have raised construction in the property which is under the occupation of the plaintiff.

2. Under such consideration, equity demands that the defendant no.1 shall be allowed to complete the construction.
3. The order of the learned Civil Judge, Senior Division is in conformity with the well-settled principles laid down by this Court in several matters including the judgments of this Court in ***Shrimati Satu Bala Dassi & Ors. Vs. Chaturanjan Saha & Ors.*** reported in ***(2014) 3 WBLR (Cal) 318*** and in the case of ***Sanghati Pal vs. Prakash Adhuryya & Ors.*** reported in ***2009 (2) CLJ (Cal) 153.***

4. The conditions imposed by the learned Trial Court appear to be reasonable.
5. Accordingly, the appeal and the application are disposed of.
6. However, there shall be no order as to costs.
7. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Apurba Sinha Ray, J.)