

**1501
2025**

WEDNESDAY

Court : 08
Item : DL-02
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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**FMAT 288 OF 2024
CAN 1 OF 2024**

**GOBINDA CHANDRA SANTRA
Vs.**

GOPAL CHANDRA SANTRA & ORS.

**MR. AYAN BANERJEE, ADVOCATE
MS. DEBASREE DHAMALI, ADVOCATE
MS. RIYA GHOSH, ADVOCATE**

.....for the Appellant

MR. SUHRID SUR, ADVOCATE

.....for the Respondent Nos. 1,2 & 3

MS. MADHUMITA PATRA, ADVOCATE

.....Special Officer

1. At the very outset, the learned Counsel for the respondent nos. 1, 2 & 3, pointed out that it was all along the stand of the plaintiffs/respondents that there was no oral partition ever effected between the parties and, therefore, the word 'defendants' has been wrongly recorded in the second paragraph of the first page of the order dated 08.01.2025, which should be replaced with the word 'respondents'.
2. Since we find the mistake is ministerial in nature, let the said order be read accordingly as pointed out.
3. Pursuant to the order dated 08.01.2025, the Special Officer submitted the report which is taken on record. The report contains the photographs depicting the exact state of affairs at the disputed site and the extent of the construction already undertaken.
4. The Special Officer indicated in the report that the construction is effected in the courtyard situated between two rooms and appears to have been substantially done. She has further raised concern on stability of the structure as it is still in unfinished condition.

5. By the impugned order, the Trial Court directed both the parties to the proceeding to maintain *status quo* with regard to nature and character of the 'A-1' scheduled property till the disposal of the suit.
6. According to the appellant, he is raising construction upon obtaining permission from the concerned authority and, therefore, passing an order of injunction in the midst of the construction would cause greater hardship than the contesting respondents.
7. On the other hand, the contesting respondents submit that if the construction is allowed to be completed and by the time the final decree is passed in the suit, it may cause an irreversible situation and then the plaintiffs/respondents would be left with no other alternative but to pray for compensation.
8. Bearing in mind the aforesaid contention and the fact that it is a suit for partition, meaning thereby the parties to the proceeding have a semblance of right, title and interest in respect thereof conjointly with each other, it would create a hardship on any of the co-sharers to use and utilize the joint property for better use and enjoyment thereof.
9. We are conscious that each co-sharer have the right, title and interest jointly with the other co-sharers in every part of the joint property but since the parties are using and enjoying it for residential as well as other allied purposes and if any of them intend to create any improvement therein, it will be more inconvenient to them, if an interim order is passed.
10. We are not unmindful that the equity would come to play at the time when the final decree would be passed by the Court and, therefore, we direct, that in the event, the equitable distribution is required at the

time of passing the final decree, the appellant shall not get any benefit of such equity nor shall be entitled to any compensation for the improvement having made at their cost. It is open to the learned Judge in the Trial Court to pass a consequential order, in the event, any portion of the structure which is now constructed by the appellant is required to be demolished. The Court should not pass a blanket order of injunction without adverting to the exact state of affairs, more particularly, when a substantial construction has already come up.

11. A further point is raised by the contesting respondents that the aforesaid construction is not in tune with the legal provisions.
12. We do not delve to go into the aforesaid aspect as the relevant laws or its provisions would be activated, in the event, there is any violation thereof and this order shall not stand in the way thereof, which we feel shall be considered on its merit.
13. The order impugned is set aside.
14. The appeal succeeds. No order as to costs.
15. Upon submission of the report, the Special Officer is discharged.
16. The report submitted by the Special Officer before this Court is only for the purpose of ascertaining the exact state of affairs prevalent at the time of inspection and shall not be used as a piece of evidence nor the Special Officer shall be called as witness to corroborate and prove the same,.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J)

