

D/L- 5
22/09/2025
Ct. No.-6
Aritra

C.O. 3164 of 2025

**Rameswar Goswami
Versus
Dhaneswar Goswami & Ors.**

Mr. Mrinal Kanti Ghosh

....for the petitioner

Mr. Arup Krishna Das
Mr. Abdus Salam
Mr. Rajarshi Ghosh

....for the opposite parties

Affidavit of service filed in Court today is taken on record.

This application under Article 227 of the Constitution of India is at the instance of the defendant No.1 and is directed against an order being No.12 dated August 6, 2025 passed by the learned Civil Judge (Sr. Div.), 1st Additional Court, Burdwan, District-Purba Burdwan in Title Suit No.97 of 2025.

By the order impugned the application under Section 151 of the Code of Civil Procedure praying for an order allowing the petitioner to construct the roof over the wall of the construction made in the Kha schedule property stood rejected.

Mr. Ghosh, learned advocate appearing for the petitioner submits that the opposite party filed a suit for partition. He submits that the petitioner has a share in the suit property and the petitioner has already made construction to a substantial extent on the suit property.

Mr. Das, learned advocate appearing for the opposite parties/plaintiffs herein raises an objection as to the maintainability of this civil revision application. He submits that the order impugned is an appealable order as by the said order the ad interim order of injunction was also extended and the petitioner ought to have preferred a miscellaneous appeal against the order impugned.

The order impugned has two parts. By the first part, the order of ad interim injunction was extended and the by the later part of the order, the application under Section 151 of the Code of Civil Procedure praying for an order permitting the petitioner to complete the incomplete construction stood rejected.

The petitioner has only challenged the later part of the order by virtue of which his prayer to complete the incomplete construction stood rejected.

For such reason this Court is not inclined to accept the submission of Mr. Das that the order impugned is an appealable order as the petitioner has challenged the portion of the order rejecting the prayer of the petitioner to complete the incomplete construction.

After going through the Commissioner's report which was filed by the petitioner on September 16, 2025, this Court finds that a construction to a substantial extent has already come up and only the casting of the roof and plastering of walls is left.

For such reason, this Court is inclined to allow the prayer of the petitioner to complete the incomplete construction.

The portion of the impugned order rejecting the prayer to complete the incomplete construction is accordingly set aside.

The petitioner shall be permitted to complete the incomplete construction without extending the same horizontally. The petitioner shall not claim any equity pursuant to the permission being granted by this Court to complete the incomplete construction.

With the above observations and directions, CO 3146 of 2025 stands disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)