

16.07.2025
Court No.25
Item No.109
sudipta

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 3057 of 2023

**Mir Nasim Ali & Ors.
Vs.
Mohammad Yunus & Ors.**

Mr. Zeaul Haque
Mr. Kartik Das

...for the petitioners

Mr. Soumik Ganguli
Mr. S. K. Das
Mr. Rohan Barishi

...for the opposite party no. 1

1. Present petition has been filed challenging the order No. 5 dated 4th August, 2023 passed by the court of learned Civil Judge (Sr. Div.), Kandi Murshidabad in Partition Suit No. 282 of 2021. Learned Trial Court vide the impugned order allowed the application of the opposite party / defendant to raise construction with certain conditions such as that the defendant no. 1 shall not claim any equity whatsoever with respect to the construction made in the property and further once a decision is reached as to the apportionment of the disputed property in respect of the co-shares, the defendant no.1 shall be directed to demolish the same, if his portion does not fall within the area where the construction has been

raised. The impugned order on the face of it does not seem to be sustainable for reasons more than one.

2. Perusal of the impugned order indicates that there was an ad interim order in favour of the petitioner / plaintiff which was extended by the learned trial Court vide the same order. During the course of submissions, it has emerged that plaintiff had filed a suit for partition in respect of 17 decimals of property. In this partition suit the plaintiff / petitioner filed an application under Order 39 Rule 1 and 2 of CPC with a prayer for a direction to the defendant to not to interfere with the peaceful possession over the 17th decimals of land and not to construct any construction over the land during the pendency of the partition suit. Though the learned counsel for the petitioner states at bar that the status quo order was passed and invites the attention of this Court to the second paragraph of the impugned order where there is a mention of extension of interim order, but the fact remains that no such order has been placed on record.
3. Be that as it may, the fact is that there was an application under Order 39 Rule 1 and 2 CPC pending disposal and during this the Trial Court on the application of defendant no. 1 / opposite

party passed an order permitting the opposite party / defendant no. 1 to raise construction subject to certain conditions as stated hereinabove. The approach of learned Trial Court is totally erroneous. Firstly, while the application under Order 39 Rule 1 and 2 CPC was pending disposal, the learned Trial Court should have decided that application and secondly, the conditions on which the application of defendant no.1 / opposite party was allowed are totally unrealistic. It would very impractical to get the property demolish on an around more than 300 sq. yards of land on 8 ½ decimals of land.

4. Thus, the impugned order cannot be sustained in the eyes of law and the same is set aside.
5. The matter is remanded back to the learned Trial Court with a direction to decide the application under Order 39 Rule 1 and 2 CPC filed by the plaintiff / petitioner in partition suit and along with that decide the application of the opposite party / defendant under 151 CPC.
6. Learned Trial Court is directed to conduct the proceedings expeditiously in accordance with law. Such injunction application and the application of

the defendant / opposite party be positively decided within two months.

7. Hence, the present petition stands disposed of.
8. All parties shall act on the basis of the server copy duly downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)