

S/L 06
15.05.2025
Court No.2
(Susanta)

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION

C.O. 46 of 2025
With
I.A. CAN 1 of 2025

Smt. Rachana Pradhan & Ors.
Vs.
Smt. Shalla Sultan Plant

*Mr. Sandip Manda ,
Mr. Amit Saha,*

... For the Petitioners.

*Mr. Nabankur Paul,
Mr. Rajdeep Bhattacharjee,
Ms. Sutapa Sen,
Mr. Bodhisatya Ghosh,*

.... For the Opposite Party.

Affidavits-of-service filed on behalf of the petitioners be kept with the record.

The instant application under Article 227 of the Constitution of India is at the instance of the plaintiffs in a suit for declaration and recovery of possession which is directed against the order no. 74 dated December 23, 2024 passed by the learned Civil Judge (Senior Division), Darjeeling in the said suit being title Suit No. 07 of 2021.

The learned Trial Judge, by the order impugned has dismissed an application filed by the plaintiffs praying for a direction upon the defendant to dismantle and/or demolish the unauthorized and illegal construction over suit schedule 'A' property.

Mr. Mandal, learned advocate for the petitioners submits that the defendant, without a building sanction plan, is executing the construction work, encroaching upon the land belonging to the petitioners described under Schedule 'A' appended to the plaint.

He further submits that the defendant, inspite of the specific direction passed in C.O. 74 of 2023, did not give the plaintiffs the inspection of the building sanction plan, which signifies that the defendant does not have any such plan.

Mr. Rajdeep Bhattacharya, learned advocate for the defendant, the opposite party herein, submits that his client, in terms of the sanction building plan, is executing the construction work on her land described under Schedule 'B' property appended to the plaint.

He further submits that the dispute between the parties is in respect of construction of a septic tank over the Schedule 'C' property, the defendant has constructed the said septic tank in terms of a sanction plan and in compliance with the direction passed in C.O. 74 of 2023, inspection of the said plan was given to the plaintiffs.

Heard learned counsel for the parties, perused the materials-on-record.

One of the main reliefs in the suit is a decree directing the defendant to dismantle and/or to remove the unauthorized construction over the 'A' Schedule property, as such, the said relief cannot be granted to the plaintiffs on an interlocutory application, therefore, rejection of the said application is well justified.

It appears that the learned Single Judge of this Court, by the judgment and order dated July 23, 2024 passed in C.O. 74 of 2023, had directed the defendant to submit the sanction building plan in terms of the plaintiffs' prayer made in the petition under Order XI Rule 12 of the Code of Civil Procedure. The inspection of the plan of the septic tank constructed in the 'C' Schedule property is not proper compliance of the said direction.

The defendant is directed to give inspection of the building plan on the basis of which she is executing construction work to the plaintiffs, such inspection be given **within a period of two weeks from date**, in default, it would be presumed that the defendant is carrying construction work without any sanction plan.

C.O.46 of 2025 is disposed of with the above terms without any order as to costs.

In view of disposal of the revisional application, the connected application for extension of interim order

being CAN 1 of 2025 has become infructuous and is dismissed as such without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

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

(Biswajit Basu, J.)