

Party Name : NARESH DEBBARMA Vs CHANDRA KANTA DEBBARMA & ORS

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. DR Choudhury, learned counsel appearing for the petitioner.

The challenge as projected by this petition under Article 227 of the Constitution of India is against the judgment and order dated 04.03.2017 passed by the District Judge, West Tripura, Agartala in case No. Misc. (Appeal) 20 of 2016 affirming the judgment and order dated 20.06.2016 passed by the Civil Judge, Senior Division, Court No.2, West Tripura, Agartala in case No. Misc (Injunction) 43 of 2016 arising from Title Suit No. 41 of 2016 granting temporary injunction restraining the present petitioner from constructing building over the 'B' schedule land till disposal of the original suit.

Mr. Choudhury, learned counsel has submitted that the respondent constructed a boundary already and that the land in question falls beyond his boundary. This physical boundary itself shows that the respondent has acceded that the land in question is not encroached by the petitioner.

This court is constrained to observe that this submission cannot be accepted. The ownership of the land is determined on the papers relating to the title and the plaintiff-respondent has categorically stated that the schedule 'B' as described in the plaint is owned by him on the basis of the valid papers relating to the title.

Both the courts below have returned a *prima facie* concurrent finding over the encroachment. There is no illegality or jurisdictional error. This court, therefore, does not find any merit in this petition. Accordingly, this petition stands dismissed.

Before parting with the record, it is clarified that the land which is not attracted by 'B' schedule of the suit, the defendant-petitioner shall be permitted to construct his building provided the permission as received from the competent authority is on the basis of the required space covered by his land.

There shall be no order as to costs.