

A PEDDI ASHOK KUMAR & ORS.
v.
PEDDI SUDARSHAN RAO
(Civil Appeal Nos. 1143-44 of 2009)

B FEBRUARY 20, 2009
**[DR. ARIJIT PASAYAT AND ASHOK KUMAR
GANGULY, JJ.]**

C *Interim Order:*

Partition suit – Preliminary decree – Appeal before High Court – Interim order maintaining status quo – Modified by High Court permitting respondent to raise construction of second floor – HELD: Merely because there was some purported inconvenience indicated by respondent, that could not have been a ground to permit construction of second floor – Order of High Court set aside – Parties to maintain status quo till disposal of matter by High Court.

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1143-1144/09

Form the Judgement & Order dated 20.10.08 of the High Court of Judicature of Andhra Pradesh at Secunderabad (A.P.), in CCCA MP No.111 of 2007 and CCCA MP. 671 of 2006.

F Dharam Bir Raj Vohra and S.K. Sabharwal for the Appellants.

The Judgment of the Court was delivered by

G **DR. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Andhra Pradesh High Court

permitting construction of the second floor, by modification of the interim order dated 3.11.2006, by which *status quo* was directed to be maintained. The High Court felt that there was no material to show that the building will not withstand the second floor and that there was inconvenience on the part of the applicant before the High Court to accommodate his sons. The High Court in the aforesaid premises modified the interim order dated 3.11.2006 and permitted construction of the second floor.

3. Learned counsel for the appellants assailed the correctness of the impugned order. There was no material before the High Court to show that any plan had been submitted or there was any sanction to construct the second floor. Specific stand was taken that the building would not withstand raising of the second floor. The High Court felt that it was for the appellant before the High Court to show that the building withstand the second floor. No material was placed by the applicant before the High Court to show that either there was any sanction for construction of the second floor or that the factual situation was that construction of the second floor would not cause damage to the building. Merely because there was some purported inconvenience indicated by the applicant that could not have been ground to permit construction of the second floor.

4. In the circumstances, we set aside the impugned order of the High Court dated 20.10.2008 and direct that *status quo* as was earlier directed by the order dated 3.11.2006 shall continue to be operative till disposal of the matter by the High Court.

5. The appeal is disposed of accordingly. No costs.