

TS:552/2022
CNR No.WBJP04 – 000 –658 -2022

Order no.

Dated : 04.03.2024

Today is fixed for compliance report and hearing of the application under Order I Rule 10(2) CPC dated 20.05.2023.

Ld. Adv. for both the parties files respective hazira.

Ld. Advocate for the plaintiff files a petition for extension of the ad interim order of injunction. The petition is hereby considered and allowed. The ad interim order of injunction dated 25.11.2022 is hereby extended till the next date.

Ld. Advocate for the plaintiff moves the application under Order I Rule 10(2) CPC this day with a prayer to add the name of the wife of defendant no.1 as defendant no.2 in the cause title of the plaint.

Ld. Advocate for the defendant raised formal objection.

Under the given scenario, this court does not find any impediment in allowing the instant application as it is not likely to cause any prejudice to the adversery.

Hence, it is

ORDERED

that the application under Order 1 Rule 10(2) dt. 20.05.2023 is allowed without any order as to cost.

Let the names of defendant as stated in the above said application be added in the cause title of the plaint.

Ld. Advocate for the plaintiff is directed to file amended plaint with amended cause title and cause service of its copy to the other side.

Ld. Adv. for the plaintiffs moves the application filed by him under Order XXVI Rule 9 CPC by submitting inter alia that appointment of an investigation commissioner is necessary to determine the real state of affairs over the suit property.

Ld. Adv. for the defendants raised formal objection by filing written objection.

Heard the Ld. Advocates for both the parties. Perused the materials on record.

On perusal of the record it appears that the instant suit being a declaratory suit. This court is of the opinion that in view of the specific dispute raised with the regard to RS plot no.382 appertaining to RS khatian no. 5 i.e. the suit plot, it is imperative that the instant application under order XXVI Rule 9 CPC needs to be allowed for determining the actual right, title and interest over the suit land, determination of the boundary of the suit land along with the real picture in controversy between the parties for proper adjudication of the instant suit. Accordingly the prayer for local investigation by the plaintiffs stands allowed.

Hence it is

Ordered

that the application u/O XXVI Rule 9 CPC dt.17.05.2023 is hereby allowed on contest.

Sri Bipul Bhattacharya is hereby appointed as the Commissioner for the proposed commission work on the points mentioned in the instant petition u/O XXVI Rule 9 CPC filed on 17.05.2023.

This court hereby fixes Rs. 9000/- (Rupees nine thousand) as the fees of the Ld. commissioner which shall be borne by the plaintiffs.

The plaintiffs are directed to pay the fees of the Ld. commissioner in cash and file money receipt with this court. On filing of such money receipt, writ would be issued.

On issuance of the writ, the Ld. commissioner shall proceed with the commission work on the aforesaid points after causing service of notice to the parties.

All the parties are directed to handover copies of the documents in connection with the suit property relied on by them, if there be any, to the Ld. Commissioner for the purpose of the commission work.

The Ld. Commissioner shall prepare rough sketch map and field note at the time of the commission work and Final Report thereafter considering such rough sketch map and field note and file all the documents before this court.

The commission work shall be done under broad day light and preferably in presence of the parties or their Ld. Adv./representatives.

All the parties are directed to assist the Ld. Commissioner in every possible manner.

The plaintiffs are directed to file a copy of the instant application under Order XXVI Rule 9 CPC so that the same may be given to the Ld. Commissioner along with the writ for the purpose of his assignment.

D.A to inform the Ld. Commissioner.

Fix 10.05.2024 for filing receipt of the fees of the Ld. Commissioner by the plaintiffs and filing of amended plaint by the plaintiff.

Dictated and corrected

by me:

(Smt. Moumita Mitra)
Civil Judge (Junior Division),
2nd Court, Jalpaiguri.
(J.O. Code No.WB01409)

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