

Title Suit 95 of 2023

Order No. 17 dated 10.04.2025

Today is fixed for passing order in respect of the application under Order 39 Rule 4 of C.P.C.

Both parties filed hazira.

Ld. Advocate for the plaintiff submitted that before the institution of the suit the plaintiffs gathered building materials for raising the first floor construction over the ground floor as due to the rainy season it would be difficult for the plaintiff to occupy the ground floor. The mud walled residential house was raised by the predecessor of the plaintiffs namely Gour Chandra Mondal and in the year 1978 that house was damaged. Soon in the year 2007 the plaintiff sought permission from the Gram Panchayat for raising pucca house over the suit property and accordingly the permission was given. The plaintiff started raising pucca pillar along with brick build roof but has to stop the work due to the filing of MP Case No. 762/22 by the defendants. Hence the plaintiff prays for raising pucca construction of the first floor over the ground floor of the residential house over the schedule suit property by modifying the order dated 20.04.2024.

Ld. Advocate for the defendant raised vehement objection stating that the plaintiffs are the sebayet of the deities to whom the schedule suit property beongs. They did not even allow the local villagers to offer seba puja to the deity. The property is not the personal property of the plaintiffs. It is a debottor property. But now the plaintiffs and proforma defendant No. 5 and 6 are using the property for their personal use.

Heard. Considered.

After perusal of the materials on record it is found out that there is a clear and specific order dated 20.04.2024 that as regards the construction over the suit property it will be decided after going into the merits of the case and taking evidences. Moreover, no clear picture is brought before the Court by way of local inspection regarding the present condition of the suit property. So this petition has no legs to stand in the eye of law.

Hence it is,

ORDERED

that the application u/Or 39 R 4 dated 01.08.2024 is hereby rejected and disposed of on contest without any order as to costs.

Fixing 19.05.2025 for framing of issues.

D/C by me

C. J. (Jr. Divn.)
Amta, Howrah

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