

IN THE COURT OF SMTI. J. R. HALOI, CIVIL JUDGE (Jr. Div.),
UDALGURI.

MISC(J) CASE NO. 34/2022

29.08.2023

Plaintiff side is represented.

I have perused the petition No. 1095 dated 01.11.2022 filed by the petitioner/defendant praying for appointing commission for measuring the suit land and to ascertain as to whether the suit premise (room) falls under the dag No. 402, patta No. 12 of village Sibapur under Barchilajhar Mouza.

In the said petition the prayer has been made for appointing 'Circle Officer', Udalguri Revenue Circle as commission to survey, measure and ascertain as to whether the suit premise falls under Dag No. 402, Periodic Patta No. 12.

It is submitted by the Ld. Counsel for the petitioner that the plaintiff filed the instant suit for ejectment and recovery of arrear house rent and for permanent injunction claiming the suit land belonging to periodic patta land of the plaintiff whereas the defendant in his written statement specifically stated that the suit land is not a part of periodic patta land rather a Govt. land. It is mentioned in the plaint that the alleged suit room is standing over 4 katha land of Dag No. 402, Periodic Patta No. 12 of village Sibapur under Barchilajhar Mouza, Udalguri District.

It is highly necessary to measure the suit land and to ascertain whether the suit room is under the Dag No. 402,

Periodic Patta No.12 of village Sibapur under Barchilajhar Mouza.

I have gone through the relevant provision under Order 26 rule 9 CPC which relates to commission to make local investigation which reads as follows-

In any suit in which the court deems a local investigation to be required or proper for the purpose of elucidating any matter in dispute or of ascertaining the market value of any property or the amount of any mesne profit or damage or annual net profit the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the court.

Provided that, where the State Govt. has made rules as to the persons to whom such commission shall be issued, the court shall be bound by such rules.

Hence, under Order 26 rule 9 of C.P.C, survey commission can be issued with a view to elucidate any point which is left doubtful on the evidence produced before it. The Court can issue local inspection suo moto at any stage if it is deemed fit for rendering just decision in a case.

In the case in hand, in view of the submission made by the Ld. Counsel and considering the importance of the prayer made by the plaintiff side and also keeping in view that the ascertainment and measurement of the suit land is vital point for proper and complete adjudication of the dispute, a commission is required to be issued.

Accordingly, the Circle Officer, Udalguri, Revenue Circle is appointed as commission for the aforesaid purpose. The said commission is asked to make local inspection as to survey and report regarding.....

(1) What is the measurement of the suit land under the Dag No. 402, Periodic Patta No. 12 of village Sibapur under Barchilajhar Mouza?

(2) Whether the suit premise (a room of an Assam Type house measuring 28'x 20' with pucca walled, pucca floor with varandas of front and back side measuring 14' x 7' with pucca floor) falls under the Dag No. 402, Periodic Patta No. 12?

The petitioner is to bear all cost of commissioner. The petitioner is asked to deposit Rs. 1,000 as to cost of commission in court which is to be given to the commission. The petitioner shall pay any other cost of commission if it submits any bill in this connection.

The commissioner shall complete local investigation within thirty (30) days from the date of serving writ of commission and is directed to submit report in the Title Suit No. 03/2020 in sealed cover within seven (7) days of completing the investigation.

The petitioner shall take necessary step for writ of commission and by depositing the amount of cost.

The instant Misc.(J) case is disposed of.