

WBND070002652022



Title Suit/199/2022

Present : Rajib Sarkar

JO Code WB01509

SUDIP SAHA Vs. BASANTI SAHA AND OTHERS.

Order no 19

Date 07.09.2024

Today is fixed for hearing of petition u/o 26 R 9 of CPC.

Both parties are represented by separate lawyer's hazira.

Ld. Advocate on behalf of the plaintiff submits that the instant petition has been made in compliance with the direction given by the Court vide order no 14 dated 20.01.2024 and to aid the adjudication of a pending petition u.s 151 of CPC.

Ld. Advocate on behalf of the defendant no 1 and 2 has filed WO and has contended that the matter of a padlock over a kitchen was not mention in the pleadings. Moreover, in the title deed of the plaintiff no such kitchen is mentioned and on the other hand the title deed of the defendants has a clear mention of the kitchen. The plaintiff is trying to take forcible possession of the kitchen that is actually within the portion of the property transferred in favour of the defendants. It is the contention of the Ld. Advocate on behalf of the defendant that the plaintiff is trying to establish that the property transferred in his favour by an earlier deed has been illegally re transferred in favour of the defendants by a later deed. But the actual scenario is that a complete separate portion has been transferred by way of the later deed.

Ld. Advocate on behalf of the plaintiff in reply states that installation of padlock over the kitchen was a subsequent event and therefore it was not stated in the plaint. Regarding the allegation of the position of the kitchen and separate portions transferred in favour of the parties, it can be ascertained only through a local investigation and after full trial.

This Court is of the opinion that all necessary observations in this regard have already been made in order no 14 dated 20.01.2024 and it was a specific direction of this Court upon the plaintiff to pray for local investigation. Such order has not been challenged by the defendants before any revisional/appellate authority. As such, the defendants presently have very little scope to raise any objection. Even considering the objections raised by them, the local investigation seems necessary.

Hence it is,

ORDERED

that the instant petition be and the same is allowed on contest.

Let the Ld. Advocate **Jagannath Ghosh** be appointed as the local investigation commissioner for conducting commission work as per the points as mentioned in the instant petition after serving notice upon **both the parties** and the fees of commission work be fixed at **Rs. 5000/-** (Rs. Five thousand only) to be paid by the plaintiff.

Issue writ upon filing of cost receipt.

Fix 13.12.2024 for commissioner's report.

(Dictated and Corrected by me)

Sd/-
Civil Judge(Jr. Divn)
Nabadwip, Nadia

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