

Sl.8
19.06.2025
Court No.6
BP

C.O. 2058 of 2025

Sri Bhagirath Das & Ors.
-versus-
Sri Narendranath Das & Ors.

Mr. Amit Baran Dash
Ms. Ankana Sarkar
... for the petitioners

Mr. Srehash Basu Dasgupta
Mr. Tirthankar Das
..for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the defendant nos. 1 and 2 and is directed against an order being no. 56 dated 18th March, 2025 passed by the learned Civil Judge (Junior Division), 1st Additional Court, Contai, Purba Medinipur in Title Suit No. 17 of 2021.

By the order impugned the applications filed by the defendant no.1 and defendant no.2 separately stood rejected.

The plaintiff/opposite party filed a suit for declaration of title and permanent injunction in respect of “ka” schedule property. Sabek plot no.1522 corresponding to hal plot no. 2037 and sabek plot no. 1523 corresponding to hal plot no. 2038 forms the part of “ka” schedule property. The defendant nos. 1 and 2 are contesting the same by filing separate written statements. The defendants have set up counter-claims in the said written statements.

After going through the written statement cum counter-claim filed by the defendant no.1 this Court finds that the defendant no.1 has prayed for a mandatory injunction in respect of B/3 schedule property. Sabek plot no. 1516 corresponding to hal plot no.2036 forms part of B/3 schedule property.

After going through the counter-claim filed by the defendant no.2 this Court finds that the defendant has prayed for mandatory injunction in respect of A/3 schedule property. Sabek plot no. 1523 corresponding to hal plot nos. 2038 forms the subject matter of A/3 schedule property. The learned trial judge rejected the application for survey commission on the ground that the counter-claim of the defendant no.1 is not in respect of the property which forms the schedule “ka” of the plaint.

The issue that arises for consideration is whether the defendants can pray for appointment of a survey passed commissioner for proving the case made out in the counter-claim.

The petitioners are directed to serve a copy of this application upon the opposite parties by registered speed post with acknowledgement due and file an affidavit of service on the next date.

There shall be an order of stay of all further proceedings in Title Suit No. 17 of 2021 along with the counter-claims pending before the learned Civil Judge (Junior Division), 1st Additional Court, Contai, Purba

Medinipur till the end of the month of September, 2025 or until further orders whichever is earlier.

List this matter under the heading “Contested Application” in the Monthly List of August, 2025.

(Hiranmay Bhattacharyya, J.)