

S/L 89
13.02.2023
Court No.652
SD

CO 686 of 2021

Smt. Bandana Das
Vs.
Smt. Manju Sen & Ors.

Mr. Sushanta Kumar Laha

...for the Petitioner.

Mr. Uttiya Ray

Mr. Arnab Mandal

...for the Opposite Party Nos.1 & 2.

Mr. P.K. Bhattacharya

...for the Opposite Party No.4.

Being aggrieved and dissatisfied with the order no.309 dated 14.02.2020 passed by the learned Civil Judge (Junior Division), 1st Court, Purba Bardhaman in Title Suit No.102 of 2000, present revisional application has been preferred.

Petitioner states that petitioner got 'A' schedule property to the plaint of the said suit by way of deed of settlement dated 30.3.1992 and petitioner accordingly mutated her name. 'C' schedule property is allegedly owned by defendant no.1/opposite party no.1 and he claims part of petitioner's property as part of her 'C' schedule property and allegedly threatening petitioner to dispossess from property marked as 'A-1' schedule to the plaint.

The petitioner further contended that the petitioner during the year 1996 with a view to raise construction a two storied building over the said property of the petitioner for permanent residence with family, submitted a site plan in

respect of bastu property. The said residential building of the plaintiff/petitioner has been constructed on approved building plan. Such premises has become old dilapidated due to pendency of the suit and the petitioner could not make any repair work of the building and it needs immediate repairing and for which an application under Section 151 was filed. The petitioner also filed an application for local inspection which was allowed by the court.

Learned court below after hearing the parties was pleased to observe that the possessory right over the P-1 schedule passage is not established in favour of either parties at this stage and prayer for repair work in A-1 schedule property has to be declined at this stage as the schedule passage is the epicentre of the pending litigation. Learned counsel for the petitioner submits that in the impugned order schedule has been erroneously mentioned as Schedule A-1 instead of Schedule A.

I have gone through the copy of the application under Section 151 of the Code of Civil Procedure. It appears from the application under Section 151 of the Code that in the said application, the petitioner has neither mentioned the nature of work, he wanted to carry out in respect of the property in question nor he has appended any schedule of such commission work. Moreover, plaintiff's case is defendant no.1 denying plaintiff's title in 'A-1' schedule trying to dispossess him. However, in the application under Section 151, plaintiff has sought for repairing 'A' schedule house

property when court below held investigation commission report failed to ascertain whether 'A-1' schedule passage forms part of 'A' schedule or 'C' schedule property and court below held that whether the 'A-1' schedule passage is in dilapidated condition or not has to be proved by plaintiff by adducing evidence. Accordingly, a confusion created as to exactly in which portion of suit property is the subject matter of said application under Section 151 of the Code of Civil Procedure. The confusion casts cloud over the prayer of the plaintiff/petitioner under Section 151 in the absence of mentioning schedule of repairing work and portion of property where repairing work exactly sought to be carried out, in the application under section 151 of the Code of Civil Procedure.

Considering the facts and circumstance of the case and the nature of prayer made in the application, I do not find any reason to interfere with the order impugned.

Accordingly, CO 686 of 2021 is hereby dismissed.

However, this dismissal order will not preclude the petitioner to make fresh application seeking repair in respect of any specific portion of suit property without reserving any right to claim possession title or any other equity in future and in the event of filing such application by the petitioner, giving details of the nature of work sought to be carried out and portion of property where such work sought to be carried out, with an undertaking as above, the court below will consider the said application on merit and will pass

appropriate order without being influenced by any of the observations made in this application.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)