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**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**C.O. 2368 of 2022
CAN 1 of 2022
CAN 2 of 2022
CAN 4 of 2023**

Ashis Kumar Pradhan & ors.

versus

Sri Shyamal Kumar Pradhan & ors.

Mr. Supriya Chattopadhyay
Mr. Sudip Kumar Maiti
... For the petitioners

Mr. Gobinda Kar
... for the opposite party nos.1, 2 and 3

Re : CAN 1 of 2022

This is an application for expunging the names of opposite party nos. 5, 6 and 7.

Mr Chattopadhyay, learned advocate for the petitioners submits that the instant application be dismissed as withdrawn since the same is defective.

In view of the above submissions the application being **CAN 1 of 2022** stands dismissed as withdrawn.

Re : CAN 4 of 2023

This is an application for expunging the names of opposite parties namely Sri Gour Samanta, Sri Nemai Samanta and Sri Bhim Charan Samanta .

Mr Supriya Chattopadhyay, learned Advocate for the petitioners submits that opposite parties namely Sri Gour Samanta, Sri Nemai Samanta and Sri Bhim

Charan Samanta have expired during the pendency of the suit and their names have already been expunged from the array of defendants in the suit before the trial Court. He submits for expunging the names of the aforesaid opposite parties from the present revisional application.

Since the names of Sri Gour Samanta, Sri Nemai Samanta and Sri Bhim Charan Samanta have already been expunged from array of parties in the suit before the Trial Court on account of their death, accordingly, their names are also expunged from the instant revisional application.

The application being **CAN 4 of 2023** stands disposed of.

Re : C.O. 2368 of 2022

This revisional application has been filed by plaintiffs-petitioners under Article 227 of the Constitution of India challenging the order No.153 dated July 25, 2022 passed by the learned Civil Judge (Junior Division), 1st Court at Tamruk, Purba Medinipur in Title Suit No.84 of 2006 allowing the application of defendant nos.1, 2 and 3 under Order XXVI Rule 9 of the Civil Procedure Code for investigation commission.

The brief fact of the case is that the plaintiffs filed a suit for declaration of title, recovery of possession and injunction in respect of property within plot nos.325 under 'Ka' schedule and also for a decree for removal of

dilapidated latrine within 'Ka/1' schedule. In the said suit investigation commission at the instance of the plaintiffs at first was allowed by the Court on 6th September, 2018. The aforesaid order of the learned trial court was assailed in revision by the defendants being C.O.3425 of 2018, which was dismissed by this Court. The defendants thereafter filed separate application for investigation commission under Order XXVI Rule 9 of the Civil Procedure Code. By the impugned order under challenge the learned Trial Court allowed such application filed by the defendants for investigation commission.

Being aggrieved by and dissatisfied with the impugned order the plaintiffs-petitioners have preferred the present revisional application.

Mr Supriya Chattopadhyay, learned Advocate for the plaintiffs-petitioners submits that at the instance of the plaintiffs, investigation commission was undertaken and all the points that have been proposed for investigation by the defendants have already been taken care of and investigated by the investigation commissioner appointed at the instance of the plaintiffs including commission of adjoining plots. The report of the local investigation commissioner was accepted by the Trial Court and in revision being C.O. 3425 of 2018 the objections raised by the defendants were turned down by the Revisional Court dismissing such revision. Thus,

primarily the second local investigation commission sought for by the defendants is not at all necessary to ascertain any new points relevant for just decision of the suit. The defendants only in order to delay the proceeding in the suit, which is pending since 2006, has come up with such frivolous application which ought to have been dismissed in *limini* by the learned trial court. In the aforesaid backdrop, he submits for setting aside the order of the Trial Court allowing application under Order XXVI Rule 9 of the Civil Procedure Code for investigation commission filed by the defendants.

In reply to the contentions raised on behalf of the petitioners, Mr. Gobinda Kar, learned Advocate for the defendants-opposite parties no.1, 2 and 3 submits that though previously local investigation commission was undertaken but the defendants by filing such application have specifically sought for local investigation commission to ascertain as to whether the 'A' strip land, i.e., 'Ka/1' schedule falls within plot no.325 or within plot nos. 140 and 141, which is an innocuous prayer to settle the dispute by and between the parties. He further submits that such point has never been dealt with in the previous local investigation commission undertaken at the instance of the plaintiffs. In light of the aforesaid submissions, he prays the impugned order under challenge be affirmed.

From the materials on record and the written statement, it is found that the defendants have made out a case that 'A' strip of land is situated within plot nos.140 and 141 instead of suit plot no.325. The plaintiffs-petitioners by way of supplementary affidavit have annexed the previous local investigation commissioner's report. Upon perusal of the commissioner's report it is found that it does not specify that the work of commission was undertaken in respect of plot nos.140 and 141. Fact remains that dispute by and between the parties is whether the 'A' strip of land falls within plot no.325 or plot nos.140 and 141. Thus, the order of the learned Trial Court for local investigation commission to ascertain and determine the actual position of schedule of 'A' strip of land does not call for interference.

Accordingly, the revisional application being **C.O. 2368 of 2022** stands dismissed.

The investigation commissioner is directed to submit report as expeditiously as possible preferably within a period of six months from date.

Petitioners-plaintiffs is directed to communicate this order to the learned trial court.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

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

(Bivas Pattanayak, J.)