

Ct. No. 652 **10.05 2024**

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C.O. 466 of 2021

Sri Ashutosh Majumdar

-Versus-

Sri Parimal Majumdar

With

C.O. 937 of 2021

Sri Parimal Majumdar @ Majumder

-Versus-

Sri Ashutosh Majumdar

Mr. Tapan Datta Gupta

Mr. Parvej Anam

**...For the Petitioner and for the
Opposite Party In C.O. 937 of 2021**

Ms. Shohini Chakrabarty

Ms. Prajaaini Das

**...For the Opposite party and for the
Petitioner in C.O. 937 of 2021**

Plaintiff/petitioner herein of C.O. 466 of 2021 and

opposite party of C.O. 937 of 2021 contended that the

plaintiff is the owner of 6/7th share of the suit property by

virtue of inheritance and also by virtue of Deed of Gift

executed by the other co-sharers. In 2013 the plaintiff

instituted Title Suit No. 16 of 2013 for passing a preliminary

decree for partition declaring their 6/7th share and also for

drawing final decree. The defendant/opposite party entered

appearance in the said suit and filed written statement. It is

alleged by plaintiff that during pendency of the said suit, in

order to cause delay, the defendant has filed two

applications, one under Section 151 of the Code of Code of

Civil Procedure to restore status-quo ante by directing the

plaintiff to remove padlock put in the underground water

reservoir and the other under Order XXVI, Rule 9 read with

Section 151 of the Code for holding local investigation on

the basis of the points mentioned in the petition.

Learned Trial Judge by the order impugned was pleased to allow the defendant's above-mentioned application under Order XXVI, Rule 9 of the Code but by the same order he rejected defendant's aforesaid other application under Section 151 of the Code.

Plaintiff being aggrieved by the impugned order whereby Court allowed local investigation commission has preferred C.O. 466 of 2021 herein and defendant being aggrieved by another part of self-same order whereby Court rejected defendant's application under Section 151 of the Code has preferred C.O. 937 of 2021 herein.

On perusal of an earlier order dated 8th March, 2018 passed in self-same Title Suit No. 16 of 2013 it appears that the Court below while disposing defendant's application for amendment of written statement was of the view that the petition filed by the defendant under Section 151 of the Code dated 8th March, 2018 would be heard after disposal of defendant's other petition under Order XXVI, Rule 9 of the Code. However, it appears that going against his earlier observation, Court below by the order impugned has disposed of both the applications and thereby rejected defendant's aforesaid application under Section 151 of the Code.

Ms. Chakraborty, learned Counsel appearing on behalf of the defendant submits that in order to substantiate her prayer seeking status quo ante, she had sought for local investigation commission and unless report of local investigation commission is placed before the Court, the question of considering defendant's prayer for status quo ante does not arise.

Learned Counsel appearing on behalf of the plaintiff submits that due to filing petitions one after another by the defendant, the final hearing of the suit is getting delayed and as such a direction may be passed upon the Court below to dispose of the suit within a time-bound schedule.

Having considered the facts and circumstances of the case, the first part of the order impugned passed by the Court below dated 22nd January, 2021 by which the Court below rejected the defendant's application under Section 151 of the Code is hereby set aside.

The Court below is directed to hear afresh the defendant's application under Section 151 of the Code after Commission report is placed before the Court below by the learned Commissioner and will pass order afresh after considering the report submitted by the Commissioner without being influence by any observation made herein.

C.O. 466 of 2021 and C.O. 937 of 2021 are accordingly disposed of.

The Court below is further directed to make all eadeavour for expeditious disposal of the suit since the suit is pending for a considerable period of time and will make his best efforts to conclude the entire proceeding of the suit preferably within a period of ten months from the date of communication of this order.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)