

Ct. No. 652
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2024

C.O. 1702 of 2021
Smt. Manoka Dhara nee Bag & Ors.
-Versus-
Sri Samir Majhi & Ors.

Mr. Sanjib Seth **...For the Petitioners**

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
Mr. Kaustavb Bhattacharjee...For the Opposite Party

Being aggrieved by the order dated 24th January, 2020 passed by the learned Civil Judge, Junior Division, 5th Court, Howrah in Title Execution Case No. 23 of 1995 (arising out of Title Suit No. 23 of 1989) present application has been preferred.

The case of the petitioner is that the predecessor of the opposite parties filed a suit being Title Suit No. 23 of 1989 against the petitioners contending that the 'Ka' schedule property of the plaint originally belonged to one Krishna Chandra Majhi, who enjoyed and occupied the said property as tenant under the Zamindar. Said Krishna Chandra defaulted in payment of tax to the Zamindar and for which a rent suit was filed and later on suit was decreed and executed by auction sale and Bharat Chandra purchased the property in auction on 25.7.1940. Thereafter mother of the plaintiff, Umasashi Devi acquired 'Ka' schedule property by a deed of kabuliat on 28.7.1941. Umasashi mutated her name and after abolition of Zamindary system 'ka' schedule prerty

was settled to Umasashi. The predecessor-in-interest of defendant Balai Chandra Majhi used to live as licensee under Umasashi in 'kha' schedule which is within 'ka' schedule. The said 'kha' schedule being reasonably required by Umasashi, she filed said suit, which was finally dismissed on contest, against which an appeal was preferred and it was held that Umasashi is owner of 'ka' schedule but 'kha' schedule belongs to defendants by way of adverse possession. Thereafter defendants filed suit for partition, but said partition suit got dismissed on contest on 17.7.1985 and appeal preferred but appeal was also dismissed. Plaintiffs case is they own 'ka' schedule property and are in possession and defendants who have no right title interest therein are disturbing plaintiff's possession. During pendency of suit, defendants in violation of the order of injunction dug a ring well and have made a Pacca Privy. Learned Court below decreed the suit by judgment dated 29th March, 1995. By the impugned judgment, the Court below granted permanent injunction restraining the defendants from disturbing and/or obstructing the peaceful possession of the plaintiffs in 'Ga' schedule suit property and mandatory injunction was also granted in favour of the plaintiff directing the defendants to demolish the 'Gha' schedule property and restore the 'Ga' schedule property to its

original nature and character at their own cost within a period of 60 days, in default the plaintiff will be at liberty to demolish the said '*Gha*' schedule property.

Thereafter, the plaintiff / decree-holder filed Execution Case, being No. 23 of 1995. In the said execution case judgment debtor preferred an application under Order XXVI, Rule 9 of the Code of Civil Procedure for ascertainment of '*Kha*' schedule property to the plaint so that it can be segregated from the '*Ga*' and '*Ka*' schedule property. The specific allegation of the judgment debtor / petitioner is that the bailiff had gone to '*kha*' schedule property to execute the writ and illegally tried to dispossess petitioner from '*kha*' schedule property though the writ is in connection with the '*Ga*' and '*Gha*' schedule property. Accordingly, for proper identification of '*kha*' schedule property and or for demarcation of executable property, judgment debtor prayed for local investigation commission.

The Court below while rejecting the aforesaid prayer under Order XXVI, Rule 9 of the Code for local investigation commission was pleased to held that from the bailiff's report dated 20th August, 2019 there is nothing to suggest that he has faced any difficulty in demarcating the '*Ga*' and '*Gha*' schedule property. The bailiff's report dated 20th August, 2019 speaks that he could not deliver

possession as there was apprehension of the breach of peace.

I have perused the copy of the bailiff's report and it appears that there is no mention that bailiff has faced any kind of difficulty in identifying the executable property.

Having considered the facts and circumstances of the case and on perusal of the report submitted by the bailiff, I find that the observation made by the Court below that there is no necessity in allowing any application for local investigation commission under Order XXVI, Rule 9 of the Code in the present context, suffers from any kind of perversity or impropriety for the reason as stated above. In such view of the matter, the present Application, being C.O. 1702 of 2021 is dismissed.

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.)