

D/L.12.
September 24, 2025.
MNS.

CO No. 342 of 2024

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CAN 1 of 2024

Mojibar Sk. @ Seikh

Vs.

Golam Haider Momin and others

Mr.Nirmalya Kumar Das,
Mr. Jahangir Hossain

... for the petitioner.

1. Affidavit-of-service filed in Court today be taken on record.
2. Despite service, none appears for the opposite parties at the time of call.
3. The matter arises out a suit for declaration of title of the plaintiffs/opposite parties and for declaration that the defendants/petitioners do not have any right, title and interest in the suit property as well as that the suit property comprises of a Mosque and is under the control of a Mosque Committee and that the Mohammedan public in the area have the right to use the suit property, and for consequential relief of injunction and other ancillary reliefs.

4. In such a suit, an application was filed by the plaintiffs/opposite parties under Order XXVI Rule 9 of the Code of Civil Procedure (Code) seeking a local investigation, *inter alia* for comparing the suit property with the CS map, for survey and relay of the property, and preparation of a case map, as well as for identification of the property claimed by the plaintiffs within the subject property.
5. By the impugned order, the learned Trial Judge allowed the same mechanically, on the alleged ground that the same was required for proper adjudication and to decide the suit.
6. However, in the absence of any specific challenge to the identity of the suit property, since the defendants/petitioners submit that they are not yet filed any written statement in the suit, there could not have been any occasion for the court to direct such local investigation as prayed for in a suit for declaratory reliefs.
7. Thus, the learned trial Judge acted without jurisdiction in allowing local investigation

for the purpose of fishing out evidence, which is not permissible in law.

8. Accordingly, CO No. 342 of 2024 is allowed, thereby setting aside the impugned order, bearing Order No. 22, dated December 5, 2023 passed by the learned Civil Judge (Junior Division), Second Court at Rampurhat, District-Birbhum, in Title Suit No. 130 of 2022.
9. It is made clear that the question of maintainability of the suit, which is raised by the defendant / petitioner, is kept open for being decided by the learned trial Judge, if such objection is raised by the defendants/petitioners before the Trial Court.
10. Consequentially, CAN 1 of 2024 is also disposed of.
11. There will be no order as to costs.
12. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)