

19.08.2025
Court No.25

Sl. No.128
Mujahid

CO 1477 of 2023

**Salil Kumar Bhattacharjee
Vs.
Supriya Bhattacharjee & Ors.**

Mr. Partha Pratim Roy,
Ms. Paulami Chakraborty,
Mr. Samrat Chakraborty,
Mr. Saikat Gayen

...for the petitioner

Mrs. Nayaab Mulla,
Mr. Sourat Nandy

...for the opposite parties

1. Present petition has been filed challenging the order dated 4th April, 2023 in title Suit No.1094 of 2018 vide which the application of the petitioner/plaintiff dated 2nd September, 2019 was dismissed.

2. Briefly stated, the petitioner/plaintiff is stated to be in possession of two rooms on the ground floor and verandah at 19A/63A Seal Lane P.O. & P.S. Tangra, Kolkata 700015. The plaintiff filed a suit for declaration and permanent injunction against the defendants/opposite parties. Learned trial court vide a detailed order dated 29th June, 2022 passed a status quo order in respect of nature, character and possession of the 'B' schedule property in possession of the petitioner/plaintiff.

3. Subsequently, the petitioner/plaintiff moved an application under Section 151 of CPC seeking directions to the defendants/opposite parties for giving access or to open the lock or to hand over the duplicate copy of the lock of the main gate, meter room, pump room, roof and water reservoir. In the application it was alleged that the defendants put a padlock on the door of the roof on account of which petitioner herein is unable to repair pipeline, water supply line from the overhead reservoir and facing a huge shortage of water. It was further alleged that the defendants also put padlock and the electric meter of the plaintiff/petitioner.

4. The defendants/opposite parties in the written objections stated that the roof always remains closed, save and except for necessary savings. It was further stated that the plaintiff uses the water from back side water tank on the verandah and also from the courtyard and as such the question of clearance of pipeline or clearance over the reservoir does not arise at all. It was further stated that electric meter is inside the garage for safety and security of the car of the defendants and the garage remains closed at night.

5. Perusal of the record indicates that the learned trial court dismissed the application merely stating that the plaintiff is in possession of only two

rooms on the ground floor and whether he has undivided one-third share over the suit property can be adjudicated only by way of trial and not at this stage. Learned trial court, thus, rejected the application of the petitioner/plaintiff for handing over the duplicate key of the lock of the main gate, meter room, pump room, roof and water reservoir without giving any reasons at all.

6. The court considers that the learned trial court has misdirected itself while not going into the issues raised in the application dated 2nd September, 2019 being moved by the petitioner/plaintiff. The issue was that whether the petitioner/plaintiff is getting water from the overhead tanks and if it is so the petitioner/plaintiff should have a right to access the overhead tanks for its maintenance and repair.

7. Learned trial court has not dwelled on this issue at all. The issue could have been decided by appointing a commissioner for local inspection to report about the usage of overhead water tanks, meter room, pump room, roof and location of the electricity meter.

8. Learned counsel for the opposite parties has also fairly submitted that learned trial court may be directed to reconsider the application of the plaintiff and decide the same after appointing a local commissioner.

9. In view of the submission, the impugned order dated 13th April, 2023 is set aside. Learned trial court is directed to decide the application dated 2nd September, 2019 afresh in accordance with the law. Learned trial court may also consider the appointing a local commissioner on the issues raised in the application.

10. The learned trial court shall decide the application independently on merits without being influenced by this order.

11. Accordingly, the petition stands disposed of.

12. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)