

Court No. 6
(265719)

19.08.2025
(AD 18)
(S. Banerjee)

CO 2879 of 2025

Subimal Chakravarti
Vs.
Surya Kumar Maity & Ors.

Mr. Anjan Kumar Mukherjee

...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against orders dated March 17, 2025 and June 20, 2025 both passed by the learned Civil Judge (Jr. Division), 2nd Court at Tamluk in Title Suit No. 3442 of 2015.

By the order dated March 17, 2025, the application under Order 26 Rule 9 of the Civil Procedure Code, filed by the plaintiff/petitioner herein, stood rejected. By the self-same order, the application for amendment of the written statement of the defendant, also stood rejected.

Learned advocate appearing for the petitioner submits that the petitioner is aggrieved by the first portion of the order dated March 17, 2025 by virtue of which the application under Order 26 Rule 9 of the Civil Procedure Code, stood rejected. Thereafter, the petitioner filed an application under Section 151 of the Civil Procedure Code, praying for recalling of the

order dated March 17, 2025, which also stood rejected by the order dated June 20, 2025.

Learned advocate appearing for the petitioner submits that on an earlier occasion a Commissioner was appointed who after holding the commission work, submitted a report dated March 24, 2003.

Relying upon the said report the suit was decreed ex parte and the Commissioner's report was made part of the decree. In the meantime, the erstwhile defendant nos. 3 and 4 transferred their property to the defendant nos. 10 to 13 who are the opposite party nos. 1 to 4 herein. The learned advocate for the petitioner further submits that before the earlier commission work was held, the erstwhile defendant nos. 3 and 4 removed the construction on the property in question. He, however, submits that after the decree was set aside, the present opposite parties have again raised a construction encroaching upon the property of the petitioner.

Learned advocate appearing for the petitioner further submits that in order to ascertain the encroached portion, local investigation is necessary.

After going through the application under Order 26 Rule 9 of the Civil Procedure Code, it does not appear to this court that the petitioner has made out a case that the earlier encroachment was removed

and thereafter the present opposite parties have made a further encroachment.

Learned advocate appearing for the petitioner, in his usual fairness, submits that the plaint has not been amended incorporating the case of subsequent encroachment by the opposite parties herein.

The learned trial judge after taking note of the fact that a local investigation was made in respect of the suit property, observed that a further commission work was not necessary and, accordingly, rejected the prayer for local investigation by an order dated March 17, 2025. The learned trial judge was right in holding that there is no impediment to rely upon the local investigation report which is available in the record of the case.

Since the order dated March 17, 2025 was passed upon a contested hearing, the learned trial judge was right in refusing to recall the said order dated March 17, 2025 on an application under Section 151 of the Civil Procedure Code being filed.

For all the aforesaid reasons, this court is not inclined to interfere with the order impugned. Accordingly, CO 2879 of 2025 stands dismissed.

(Hiranmay Bhattacharyya, J.)