

Rupen Basu Mallick Vs. Prabir Basu Mallick

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Court : Kolkata

Decided On : Aug-26-2013

Judge : Nadira Patherya

Appellant : Rupen Basu Mallick

Respondent : Prabir Basu Mallick

Judgement :

ORDER

SHEET GA No.2023 of 2013 PLA No.46 of 2006 TS No.12 of 2009 IN THE HIGH COURT AT CALCUTTA Testamentary and Intestate Jurisdiction ORIGINAL SIDE IN THE GOODS OF : MADHABENDRA BASU MALLICK (DEC) AND RUPEN BASU MALLICK versus PRABIR BASU MALLICK BEFORE: The Hon'ble JUSTICE PATHERYA Date :

26. h August, 2013.

Mr.Siddhartha Mitra, Sr.Adv.Ms.Pooja Das Choudhury, Adv.for Rupen Basu Mallick Mr.Hirak Mitra, Sr.Adv.Mr.Dipayan Choudhury, Adv.for the applicant The Court : The petitioner seeks correction of order dated 12th August, 2013.

13. and 13B.

be corrected to 14A, Radhanath Mallick Lane and locked door is at the entrance in the 4 ft.

passage leading to lot B.

The staircase is the main bone of contention between the two parties.

Admittedly the owner of lot A has not constructed his staircase which he was entitled to do and the only explanation given is that once mutation and separation is effected can such application for construction of staircase be filed with the Kolkata Municipal Corporation.

In the 4 ft.

passage which has been constructed along 13A and 13B, Radhanath Mallick Lane, Calcutta for owner of lot B, the owner of lot B was required to draw drainage, water and electricity line through the said passage, and only thereafter, the owner of lot A would be required to construct the separate staircase.

Till then the owner of lot A would use the existing staircase of lot B.

This has been disputed by counsel for the owner of lot A who submits that although the separate passage has been created but the entrance has been put under lock and key, key whereof is with the owner of lot A.

Therefore the key be handed over to the owner of lot B as the owner of lot B has a right to be in possession of the said lot.

A separate staircase be also constructed.

As no step has been taken till now by the owner of lot A to do so the existing staircase in lot B is being utilised by the owner of lot A.

Having considered the submission of the parties, a Receiver has been appointed to submit his report.

The said report was to be submitted by 20th August, 2013 and the only reason for postponing the meeting was that mistakes which had crept in the order dated 12th

August, 2013 needed correction.

As the correction has been made in the order dated 12th August, 2013, there should be no reason for the Receiver not to implement the order passed.

Accordingly, the Receiver is directed to submit his report on the next date of hearing.

The only act which has prevented the executor from administering the estate is the staircase which has till date not been constructed in lot A.

The parties will try to resolve the said issue and for such purpose if necessary the owner of lot B will give a letter of no objection to the owner of lot A for construction of such staircase so that the same can be submitted to the Municipal Corporation for grant of sanction for construction of staircase.

Directions are given for filing affidavits.

Affidavit-in-opposition be filed by 30th August, 2013; reply thereto, if any, be filed by a week thereafter.

Matter to appear in the list on 9th September, 2013 as For Orders.

Receiver and all parties concerned are to act on a signed photocopy of this order on the usual undertakings.

(PATHERYA, J.) TR/

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