DISTRICT : NORTH 24 PARGANAS

In the Court of Ld. 3rd Additional District Judge at Barasat

Title Suit No. 205 of 2010

(In connection with Title Appeal No. 36 of 2012)

Sri Tarun Kumar Das

.....Plaintiff

-Versus-

Smt. Arati Das

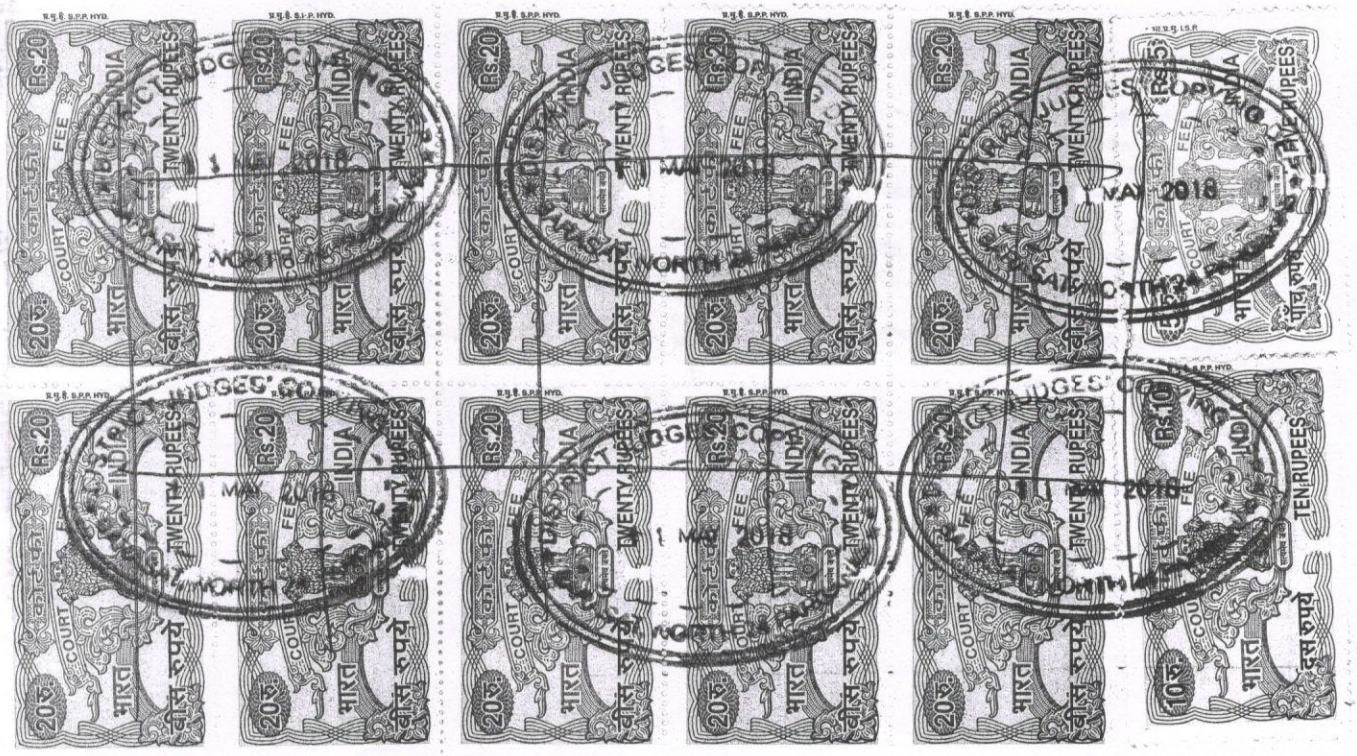
....Defendant

C-117

Petition No. X- 6015 dated 10-05-2018

213

Assessment Date : 11/05/2018



Checked by

DISTRICT JUDGES' COPYING DEP.
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COPYING DEP.
Barasat, North 24 Parganas

Date of application for copy 10/05/18

1. [redacted] 11/05/18
2. [redacted] 11/05/18
3. [redacted] 11/05/18
4. [redacted] 11/05/18
5. Copies of copy .....
6. Number of the Xerox sheets

Rs. 215/-

1+70=71

A

Dismissed ex parte on 24.09.12

3rd Add J
C/W - TA 36/12 (File - A) (Total 61 Sn) 474

x 5715 of 4/10/10
ord - 2/shows
S. Basu
6.10.10.

x 6015
ord. 7. Sn
Ord. 2.00
Plaint. 17.00
26.00

In the Ld. 2nd Court of Civil Judge, Sr Divn, Barasat, N-24 Parganas.
Present Sri A. Chakraborty C.J.

T.S. 205 of 2010

Sri Tarun Kumar Das - Pltff.
Smt Prati Das & ors - Defdts

1/10/10 Plaint filed by the Plaintiff today. Registry. C. Fee required of Rs. 4300.00 C. Fee paid of Rs. 4280.00 Requisite fee in P. Fee paid. Issue summons upon the defdts by both ways. Fix 7-1-11 for appearance for ascertaining contest and S/A of summons and D.P. Card.

C.J.

Later This is an application u/s 39 R 1 & 2 read with Sec 151 C.P.C. supported by an affidavit praying passing an order of ad interim injunction against the defdts on the terms stated therein but not when moved.

C.J.

DISTRICT JUDGES' COURING DEPOT
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURING DEPOT
Barasat, North 24 Parganas

2/4.10.10

The ld.advocate for the plaintiff moves the petition u/o.39 rule 1,2 read with section 151 CPC.

It is reported by the office that no caveat has been lodged yet.

Heard the ld.advocate. Perused the plaint, injunction application and documents placed before me.

Considered.

The case of the plaintiff in nutshell is that he is engaged in the business of construction and Bishnupada Das (since deceased) and his wife Arati Das(defendant no.1) jointly obtained vacant suit plot under a registered deed of lease for 999 years. After that Bishnupada Das constructed a partly one storied residential building over the suit plot as per building sanction plan. He died intestate on 15.7.90 leaving behind his widow defendant no.1 ,one married daughter defendant no.2 and a son defendant no.3.with an intention to raise further construction, the defendant no.1 contacted the plaintiff and the plaintiff agreed to undertake the construction work and to complete the said two floor on the existing party constructed ground floor. It was also agreed upon that the 1st and 2nd floor of the said premises would be given to the plaintiff under the defendants as tenant. Accordingly a written agreement was executed with a condition that the plaintiff should pay an amount of Rs.13,60,000/- the defendants as security deposit and they should obtained the necessary permission from the competent authority. As per agreement on 11.4.02 the plaintiff paid Rs.9,26,000/- by cheque and cash. Accordingly plaintiff started construction work and at that period the defendant no.1 inducted one Debobrata Gupta in a portion of the ground floor without intimation and consent of the plaintiff. At his own cost the plaintiff prepared a revised building plan. After that the defendant no.1 left the suit premises with her married daughter and son. Unfortunately the said son was declared insolvent by the Hon'ble High Court. But the defendant no.1 after taking so much amount of money created obstruction to the work by the plaintiff. The defendant no.1 filed a T.S.103/03 before this court against the plaintiff inter alia alleging that the plaintiff on 20.1.03 made attempt for forcible possession of the suit property. But thereafter due to amicable settled the suit was dismissed on non prosecution on 29.5.07. The plaintiff further paid a sum of Rs.1,02,000/- on 30.7.07 .Subsequently the plaintiff was also paid Rs.25,000/- on 4.10.08.The defendant no.1 appointed the plaintiff as attorney by executing a general power of attorney on 11.4.02. Then the defendant no.1 again started to create obstruction and hindrance in the work of the plaintiff . Apart from that the defendant no.1 threatened that the suit property would be transferred to a third party to make pecuniary gain. Recently the plaintiff has come to know that the defendant no.2 & 3 have approached the competent authority accord permission to transfer their respective share in the suit property to their mother by a deed of without intimating and obtaining consent of the plaintiff .The plaintiff then intimated all the facts the

Checked by

DISTRICT JUDGES' COURTS OF
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURTS
North 24 Parganas

...petent authority by a letter dt.9.9.10 and he was called in the office of the competent authority on ...10 and after hearing him he was told to approach the competent civil court for obtaining appropriate order. If the defendant no.2,3 succeed to transfer their share of the suit property in favour of the defendant no.1, the plaintiff reasonably apprehend that the defendant no.1 may transfer the suit property to a third party to the detriment of the interest of the plaintiff. So the prayer for temporary injunction as well as ad interim injunction has been made.

The copies of the documents prima facie support the case of the plaintiff . No doubt at this stage the title of the suit property should be preserved otherwise the object of injunction will be defeated due to delay. I am not inclined to pass any interim order directing the defendants to permit the plaintiff to raise construction without giving them an opportunity of being heard.

Considering the facts and circumstances of the case , I think status quo order for a limited period will be just and proper at this stage.

Therefore, the defendants are directed to maintain status quo in respect of alienation and construction over the suit property till 01.12.10(for ensuing puja vacation).

Issue notice upon the defendants to show cause within 10 days from the date of receipt of notice as to why the aforesaid order shall not be made absolute.

The plaintiff is directed to comply the provision u/o.3(a) and 3(b) at once.

To date for SR and further order.

D/c by me.

Judge,

C.J.(Sr.Divn.)2nd court.

3

5.10.2010

In view of the order no - 2 dated 4.10.2010 plaintiff files an Affidavit along with 3 Postal receipt showing compliance the Provision u/o 39 rule 3(a) and 3(b).

Requisite Part in. Process fee Paid.

I issue the show cause notice and Injunction accordingly

civil Judge

Checked by

DISTRICT JUDGES' COORDINATING DEPOT
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COORDINATING DEPOT
BARASAT, NORTH 24 PARGANAS

T.S. 205/10

4/1.12.10

Plaintiff files hazira. Plaintiff files a petition for extending the interim order. No SR of show cause notice in respect of the defendants has been received.

The petition for extension is moved.

Heard .

The facts and circumstances of the suit suggest further extension. The ad interim order dt. 4.10.10 is extended till 6.1.11.(due to ensuing puja vacation).

As no SR has been received , the injunction petition could not be disposed of today.

To 6 .1.11 for SR and if received after proper service for injunction hearing.

D/c by me.

Judge, C.J.(St. Divn.), 2nd court.

T.S.205/10

5/6.1.11

Plaintiff files hazira. Plaintiff files a petition for extending the interim order. No SR of show cause notice has been received.

The extension petition is moved.

Heard.

The facts and circumstances of the suit suggest further extension. The ad interim order dt. 4.10.10 is extended till 4.2.11.

As SR has not been received, the injunction petition could not be disposed of today.

To 4.2.11 for SR and if received after proper service for injunction hearing.

D/c. By me.

Judge. C.J.(St.Divn.),2nd court.

Checked by

DISTRICT JUDGES' COPYING DEPT.
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COPYING DEPT.
Barasat, North 24 Parganas

T.S. ~~42/10~~ 205/10

6/4.2.11

Plaintiff files hazira. Plaintiff files a petition for extending the interim order. No SR of show cause has been received

The extension petition is moved.

Heard.

The facts and circumstances of the suit suggest further extension. The ad interim order dt. 4.10.10 is extended till 1.3.11.

As SR has not been served, the injunction petition could not be disposed of today.

Todate for SR and if received after proper service for injunction hearing.

D/c by me.

Judge C.J.(Sr.Divn.)2nd court.

Plaintiff files hazira. Plaintiff files a petition for extending the interim order. No SR in respect of other defendants has been received.

The extension petition is moved.

Heard.

The facts and circumstances of the suit suggest further extension. The ad interim order dt. 4.10.10 is extended till 1.4.11.

As SR has not been received, the injunction petition could not be disposed of today.

To 1.4.11 for SR and if received after proper service for injunction hearing.

D/c by me.

Judge. C.J.(SR.Divn.)2nd court.

Checked by

DISTRICT JUDGES' COURTS OF
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURTS OF
BARASAT, NORTH 24 PARGANAS

T.S.205/10

8/14.11

Plaintiff files hazira. Plaintiff files a petition for extending the interim order. No SR in respect of defendants has been received

The extension petition is moved.

Heard.

The facts and circumstances of the suit suggest further extension. The ad interim order dt.4.10.10 is extended till 28.4.11.

As SR has not been received, the injunction petition could not be disposed of today.

To 28.4.11 for SR and if received after proper service for injunction hearing.

D/c by me.

Judge. C.J (SR.Divn.)2nd court.

9/28.4.11

Plaintiff files hazira. Plaintiff files a petition for extending the interim order. No SR in respect of defendants has been received.

The extension petition is moved.

Heard.

The facts and circumstances of the suit suggest further extension. The ad interim order dt. 4.10.10 is extended till 24.5.11.

As SR has not been received, the injunction petition could not be disposed of today.

To 24.5.11 for SR and if received after proper service for injunction hearing.

D/c by me.

Judge. C.J (SR.Divn.) 2nd court.

Checked by

DISTRICT JUDGES' COURING DEPT.
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURING DEPT.
North 24 Parganas

T. S. 205/10

10
24.5.11 Plaintiff files a petition supported by an affidavit praying for extension of the order of ad interim injunction. Plff. files a petition u/o 5 r. 20 CPC. Summons is not yet received. D. No. is on the rolls.

Order of ad interim injunction be extended till 17.6.11. To date for hearing petition u/o 5 r. 20 CPC.

Dpc

Chairman.

Chairman.

11
17/6/11 The plaintiff files hazira and a petition for extending the ad-interim order.

Today is also fixed for hearing of the petition u/o 5 rule 20 CPC.

A.D card of the defendant no.'2' has been received after service. But the defendant no.'2' did not turn up. So, let this suit be heard ex-parte against the defendant no.'2'.

Sealed envelopes in the name of the defendant no.'1' and '3' had been received with remark "N/c". The Ld. Advocate for the plaintiff submits that his client is desirous to publish notice of this suit in the newspaper.

It appears that the defendant nos.'1' and '3' are avoiding the service. As per the Hon'ble Court, the positive service return with remarks "not claimed" is good service. But here the plaintiff is not willing to take benefit of that. So, I find no justification to disallow the prayer of the plaintiff.

Therefore, the petition u/o 5 rule 20 CPC is allowed.

The plaintiff is permitted to publish notice of the suit in the name of the defendant nos.'1' and '3' in the Bangla

Checked by

DISTRICT JUDGES' COURING OFFICE
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURING OFFICE
Barasat, North 24 Parganas

daily newspaper having wide circulation especially in the circulation locality of the residence of the defendant nos. '1' and '3'.

The plaintiff is directed to file draft copy of the publication.

To 15.7.2011 for filing draft copy.

The Ld. Advocate for the plaintiff moves the petition for extending the ad-interim order.

Heard. Perused the case record and considered.

It appears that for the interest of justice, the ad-interim order should be further extended.

Therefore, the ad-interim order dated 4.10.10 is extended till 15.7.2011.

7/14.7.11.

Plaintiff files hazira. Plaintiff files a petition for extending the interim order No SR in respect of defendant no.1 &3 has been received.

The extension petition is moved.

Heard.

The facts and circumstances of the suit suggest further extension. The ad interim order dt4.10.10 is extended till 12.8.11

As SR has not been received, the injunction petition could not be disposed of today.

Draft copy of the publication is filed. Sheristadar is directed to check and report.

To 12.8.11 for filing copy of the publication and injunction hearing.

The publication should be made in the meantime.

D/c by me.

Judge, C.J. (SR.Divn.) 2nd court.

Checked by

DISTRICT JUDGES' COURING OF
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURING OFFICE
BARASAT, NORTH 24 PARGANAS

civil Judge (Senior Division)
2nd court, Barasat

(5)

T. S. 205/10

8/12.8.11.

Plaintiff files hazira. Plaintiff files a petition for extending the interim order. No SR in respect of other defendants has been received. The plaintiff submits the draft copy of notice published in the newspaper on 17.7.11. So, one month has not been expired after publication of the said notice.

The extension petition is moved. Heard.

The facts and circumstances of the suit suggest further extension. The ad interim order dt. 4.10.10 is extended till 6.9.11

As SR has not been received and one month has not been expired published in the newspaper, the injunction petition could not be disposed of today.

To 6.9.11 for injunction hearing.

D/c by me.

Judge,

C.J. (SR Divn.) 2nd court.

6.9.11

Plaintiff files a petition praying for extension of the order of adinterim injunction. The petition is on leave considered. The order of adinterim injunction is extended till 19.9.11 for injunction hearing.

D/C

c.j. (Sr. Div.)

Checked by

DISTRICT JUDGES' COURING OFFICE
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURING OFFICE
Barasat, North 24 Parganas

T.S. 205/10

19.09.11
10.30 A.M.

Plaintiff files hazira. Plaintiff files a petition for extending the interim order. Today is fixed for SR and if received after proper service for injunction hearing.

The ld.advocate for the plaintiff prays for making the interim order absolute as the defendants did not appear before the Court inspite of publicaton of the notice in the newspaper.

Perused the case record and considered.

Now it is 3.45p.m.

This court passed an ad interim order on 4.10.10 and the defendants were directed to show cause within 10 days from the date of receipt of the notice as to why the temporary injunction petition should not be allowed. In spite of opportunity the defendants did not show any cause. So it is clear that defendants have nothing to say against the injunction application.

The facts and circumstances of the instant suit suggest the preservation of the suit property. Therefore, the petition u/o.39 rule 1&2 read with section 151 CPC is allowed exparte. Accordingly the interim order dt.4.10.10 is made absolute.

Let the suit be heard exparte against the defendants.

To 09-11-11 for exparte hearing.

O/C By me.

Sd/-

Sd/-

C.J.(Sr.Divn.),2nd court.

11
9-11-11

Plt bils hazira.
Affidavit in chief filed by the plt along with some documents as per bilists.
No time to pay. PO is busy with the hearing of other cases as per directs of the Hon'ble court.
Put exparte hearing
To 16-11-11

DPC
Sd/-

12
16-11-11

Plt bils hazira.
Documents filed by plaintiff as per bilists.
PW-1 is present. He is examined in chief ~~cross examined~~ in full and discharged.
Documents are marked as Ext 1 to 10.
To 2.12.11 for argument and order

DPC
Sd/-

Checked by

DISTRICT JUDGES' COURTING OFFICE
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURTING OFFICE
BARASAT, NORTH 24 PARGANAS

(6)

In the Ld. 2nd. Court of Civil Judge
Sar. Divn. Barasat, North 24 Pgs
T. S. 205/10.

7 4072 dt 27/4/1
0.12 Echum
Order = 2 "
Total = 9 Chum
20/5/12

13
02/12/11 Plaintiff files hazira.
Today is fixed for argument.
Heard argument.
I am in charge of the Registrar and Member-Secy. DLSA. So, fixing 3.2.12 for order.

14
3.2.12 Pltt files hazira
to 23.2.12 for argument

15
23.2.12 Pltt files hazira
Heard argument
to 7.3.12 for order

16
7.3.12 Pltt files hazira
order not yet ready
to 27.3.12 for order

17
27.3.12 Pltt files hazira
order not yet ready
to D. A. is on leave
to 24.4.12 for order

DISTRICT JUDGES' COURING OF
11 MAY 2018
BARASAT, NORTH 24

1

DISTRICT JUDGE'S COURING OF
North 24 Parganas

TS.205/10

18/24.04.12

Plaintiff files hajira.

The record is taken up for passing order.

This is a suit for declaration and injunction valued at Rs. 69,000/-.

The plaintiff's case is that the suit property was the jointly owned property of the defendant no.1 and her husband Bishnu Pada Das. On the death of Bishnu Pada Das his share devolved upon the defendants who are his widow and children.

In order to make further construction above the existing one storied residential building the defendant no.1 contacted the plaintiff and executed an agreement to this effect. It was agreed that the plaintiff would pay the defendant Rs.13,60,000/- as security deposit and thereafter the defendants after receiving necessary permission from the competent authority would execute necessary documents in favour of the plaintiff. In part compliance of the agreement dated 11.4.02 the plaintiff paid Rs. 9, 26,000/-to the defendants on different dates and also began raising construction upon the suit property.

According to the plaintiff the defendant no.1 started creating obstruction to the construction work of the plaintiff and some criminal cases and a civil litigation was instituted between the parties. The civil litigation was dismissed for non-prosecution on amicable settlement arrived at between the parties. The plaintiff claims that the defendant no.1 and 2 in terms terms of the compromise petition filed in the civil litigation executed a power of attorney dated 16.4.08 permitting the plaintiff to proceed with the work of construction but the plaintiff has recently come to know that the defendants are trying to transfer the suit property to a 3rd party and the plaintiff filed this suit for declaration and injunction.

The defendants did not appear to contest after having received the summons and the matter was taken up for exparte hearing.

The plaintiff was examined as P.W.1 and some documents were exhibited in favour of the plaintiff. Exhibit -2 is the agreement for nomination and assignment on the basis of which the plaintiff claims to have acquired right,title and interest in respect of the suit property.

On perusal of the said document it appears that this is an agreement for assignment of immovable property and under the Stamp

DISTRICT JUDGES' COURING OF
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURING OF
BARASAT, NORTH 24 PARGANAS

2nd ctr
ac 18
19-4-12

Act should be written on paper equivalent to the market value of the property to be transferred. That apart according to the Registration Act any agreement in respect of transfer which creates an interest in immovable property is to be registered and as the documents does not fulfill both the conditions it can be safely be concluded that no right actually accrues to to the plaintiff on the basis of the document and the plaintiff can not rely on the same.

From the pleadings of the plaintiff and evidence on record it apparently appears that the dispute between the parties is in respect of the construction of the suit property and this was admittedly resolved in T.S.103/03 by a compromise petition after which the suit was dismissed for non-prosecution. However the orders in respect of T.S.103/03 has not been submitted in this Court.

On perusal of the documents and pleadings of the parties it appears to this Court that the proper relief for the plaintiff would have been in a decree for Specific performance of Contract and not for declaration.

According to the provisions of Section 34 of the Specific Relief Act under the proviso thereon a decree of declaration is prohibited where the plaintiff being entitled to seek further relief fails to do so. The further relief in the instant suit would not be an injunction but Specific Performance.

That apart according to the provisions of Section 41 of Specific Relief Act the relief of injunction is also barred where the plaintiff entitled to equally efficacious relief fails to seek for one. It also appears from the case of the plaintiff that the plaintiff can be adequately compensated by damage but as the plaintiff fails to seek damages no relief can be granted to the plaintiff.

Court fees paid is correct.

Hence, it is,

Ordered

that the suit be and the same is dismissed exparte without cost.

C.J.(Sr.Divn.)
2nd Court,Barasat

Checked by

DISTRICT JUDGES' COURTS
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURTS
BARASAT, NORTH 24 PARGANAS

West Bengal Form No. 3263.

(8)

HIGH COURT FORM No.(J) 25

DECREE IN ORIGINAL SUIT

(Order 20, Rules 6 and 7 Code of Civil Procedure)

DISTRICT North 24 Parganas

In the 2nd Court of Ld. Civil Judge (Sr. Divn.) at Barasat.

Titul SUIT NO. 205 OF 2010

Tarun Kumar Das, Son of Lt. Santi Ranjan Das. of M/S Artland, residing at EF/13/8, Salt Lake City Sector-II, Kolkata-700091, Under P.S-Bidhannagar (East) in the Dist. North 24 Parganas having its office cartier at CD-295 Salt Lake City, Sector-1, Kolkata-700064 and presently at CJ-30, Salt Lake City, Sector-II Kol-91 Plaintiff(s)

Versus

1. Smt. Arati Das, wife of Lt. Bishnupada Das cartier residing at EC-130, Salt Lake City, Sector-1 Kolkata-64, Dist. North 24 Parganas. now residing at 23-D, Bade Raipur Road, P.S-Jadavpur, Kol-32.
2. Smt. Anjana Chanda, W/O Dr. Bikash Chanda and daughter of Lt. Bishnupada Das residing at 23-D Bade Raipur Road, P.S Jadavpur, Kolkata-700032. Defendant(s)
3. Amit Kumar Das, Son of Lt Bishnupada Das. Cartier residing at EC-130, Salt Lake City, Sector-1 Kolkata-700064, North 24 Parganas and also at 149 Sri Lane, P.S-Muchipara, Kolkata-700014

CLAIM : Suit for declaration and injunction valued at Rs. 69,000/- for declaration and Rs. 10000/- for injunction.

Checked by

DISTRICT JUDGES' COOVING DEPO
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COOVING DEPO
BARASAT, NORTH 24 PARGANAS

This suit Comming on this day for final disposal before the 2nd Ld Civil Judge (Sr. Divn) Barasat, North 24 Parganas in the presence of Smt. Melissa Gurung.

Tapak Mukherjee. Adv. for the plaintiff

and of

for the Defendant

It is ordered and decreed that

Ordered

That the suit be and the same is dismissed exparte without cost.

Checked by

DISTRICT JUDGES' COURING DEPOT
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURING DEPOT
BARASAT, NORTH 24 PARGANAS

(2)

SCHEDULE

All that the rent free land measuring 4.2395 Cottahs being the land a little more or less together with the partly build one storied Building situated in plot No.130 in Block EC, Sector-1 Salt lake city under Police Station Bidhannagar North 24-Parganas, Sub-registration office at Bidhannagar in the District of North 24-Parganas butted and bounded by :

On the North : Plot No.24 (5K), 25 (5K) and 129 (4K) in Block EC.

On the South : Plot No. 131 (4K) in Block EC & Type- VI Road.

On the East : Plot No. 127 (4K) in Block EC & Type- VI Road.

On the West : Plot No. 24 (5K) and 131 (4K) in Block EC.

and that the sum of Rs.
be paid by the

to the

on account of the costs of this suits, with interest thereon at the rate of
percent, perannum from this date to date of realisation.

Given under my hand and the seal of this court, this* 24th day of April 2012.

*Enter here the date of the judgement.

The address given above are the address given by the pleaders for service.

Sanjay Basak
Reading Assistant

Judge.

N.B.— The Judge shall make on autograph note stating the date. Month and year on which he is signed and initial the corrections or alterations, if any.

Civil Judge (Senior Division)
2nd. Court, Barasat,
North 24-Parganas

Checked by

DISTRICT JUDGES' COURING OFFICE
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURING OFFICE
Barasat, North 24 Parganas

DISTRICT : NORTH 24-PARGANAS

IN THE LEARNED 2ND COURT OF THE CIVIL JUDGE (SENIOR DIVISION)

AT BARASAT

Title Suit No. [illegible] of 2010

Tarun Kumar Das, son of Late Santi Ranjan Das, Proprietor of M/s Artland, residing at EE/13/8, Salt Lake City, Sector - II, Kolkata - 700 091, under Police Station Bidhannagar (East), in the District of North 24-Parganas having its office earlier at CD-295, Salt Lake City, Sector - I, Kolkata - 700 064 and presently at CJ-30, Salt Lake City, Sector - II, Kolkata - 700 091, in the District of North 24-Parganas.

.... Plaintiff.

-Versus-

1. Smt. Arati Das, wife of Late Bishnupada Das, earlier residing at EC-130, Salt Lake City, Sector - I, Kolkata - 700 064, in the District of North 24-

Checked by

DISTRICT JUDGES' COURTS
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURTS
BARASAT, NORTH 24 PARGANAS

(11)

FILED BY

TARAK MUKHERJEE
ADVOCATE

Parganas and now residing at 23-D, Bade Raipur Road, under Police Station Jadavpur, Kolkata - 700 032.

2. Smt. Anjana Chanda, wife of Dr. Bikash Chanda and daughter of Late Bishnupada Das residing at 23-D, Bade Raipur Road under Police Station Jadavpur, Kolkata - 700 032.

3. Amit Kumar Das, son of Late Bishnupada Das, earlier residing at EC-130, Salt Lake City, Sector - I, Kolkata - 700 064, in the District of North 24-Parganas and also of 49, Suri Lane, under Police Station Muchipara, Kolkata - 700 014.

.... Defendants.

SUIT FOR DECLARATION AND INJUNCTION VALUED AT Rs.69,000/- FOR DECLARATION AND RS. 1,000/- FOR INJUNCTION

1. That the plaintiff is engaged in the business of construction under the name and style "M/s. Artland" and the office earlier was at CD-295, Salt Lake

Checked by

DISTRICT JUDGES' COSVING DE
11 MAY 2018
BARASAT, NORTH 24

DISTRICT JUDGE'S COSVING DEP
Barasat, North 24 Parganas

City, Sector - I, under Police Station Bidhannagar (North), Kolkata - 700 064, in the District of North 24-Parganas and the present office is at CJ-30, Salt Lake City, Sector - II, Kolkata - 700 091, in the District of North 24-Parganas.

2. That Bishnupada Das, since deceased, and his wife Smt. Arati Das, the defendant No. 1 jointly obtained a vacant plot of land measuring more or less 4.2395 cottahs being Plot No. 130, Block-EC, Sector - I of the Northern Salt Lake City extension area in the District of 24-Parganas now in North 24-Parganas on lease under a registered Deed of Lease dated 20th August,1970 from the Governor of West Bengal for 999 years registered at the office at Cossipore Dum Dum , in Book No.1, Volume No. 95, for the year 1970 for erecting a building on the said plot of leasehold land for residential purpose

3. That after taking possession of the said leasehold land the said Bishnupada Das applied to the Salt Lake Authority ie., Bidhannagar Notified Area Authority now Bidhannagar Municipality for sanction of the building plan and constructed a partly one storied residential building on the said plot of leasehold land and started living there with his family as described in the schedule below hereinafter referred to as the suit property.

4. That the said Bishnupada Das, however died intestate on 15th July, 1990 leaving behind his widow Smt. Arati Das, the defendant No.1, one married daughter Smt. Anjana Chanda, the defendant No. 2 and a son Amit Kumar Das, the defendant No. 3.

FILED BY TARAK MUKHERJEE ADVOCATE

Checked by

DISTRICT JUDGES' COURTS OF
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURTS
North 24 Parganas

FILED BY
TARIK MUZAFFAR
ADVOCATE

5. That after the demise of the said Bishnupada Das, the defendant No. 1 wanted to make further construction upon the existing one storied residential building but she had no source of income and Banks and financial institutions also refused to sanction home loan.

6. That the defendant No. 1 then contacted the plaintiff for making construction of the other two floors on the roof of the existing building and upon negotiation the plaintiff agreed to undertake the construction work and the defendant No. 1 agreed to engage the plaintiff to construct and to complete the said two floors on the existing partly constructed ground floor and to give the first floor and the second floor to the plaintiff as tenant under the defendants. Accordingly an agreement by and between the plaintiff and the defendants was arrived on 11th April, 2002 which was notarised on 12th April,2002 inter-alia on the following terms and conditions :-

i) That the plaintiff shall pay an amount of Rs. 13,60,000/- to the defendants as security deposit.

ii) That the defendants shall obtain the necessary permission from the competent authority and accordingly a notarised power of attorney was made and executed by the defendants in favour of the plaintiff to carry out the construction work.

7. According to the said Agreement dated 11.04.2002 the plaintiff paid Rs. 9,26,000/ by cheque and cash as follows :

Checked by

DISTRICT JUDGES' COURING
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURING
North 24 Parganas

FILED BY
TARAK MUKHERJEE
ADVOCATE

11.04.2002	Rs. 1,60,000/-
15,05.2002	Rs. 1,00,000/-
19.05.2002	Rs. 1,00,000/-
03.08.2002	Rs. 50,000/-
18.09.2002	Rs. 98,500/-
11.10.2002	Rs. 1,00,000/-
12.11.2002	Rs. 50,000/-
12.11.2002	Rs. 50,000/-
	Rs. 7,08,500/-
The plaintiff also paid	Rs. 50,000/-
02.12.2002	Rs. 1,00,000/-
05.12. 2002	Rs. 67,500/-
Total	Rs. 9,26,000/-

And these payments have been acknowledged by way of money receipts by all the defendants more particularly the defendant No. 1 Smt. Arati Das.

8. That the plaintiff started construction work for raising two more floors as per the earlier sanctioned plan in the front portion of the ground floor in

DISTRICT JUDGES' COURING OF
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURING OF
BARASAT, NORTH 24 PARGANAS

(15)

FILED BY

TARAK MUKHERJEE

the said building which was kept vacant by the defendant's husband. At that period the defendant No. 1 inducted one Debabrata Gupta in a portion of the ground floor in that building without any intimation and consent of the plaintiff and the plaintiff came to know about the said tenancy from a letter / intimation addressed to the Chairman of the Bidhannagar Municipality vide letter dated 18.04.2007 written by the said Debabrata Gupta that he has taken a portion of the ground floor of the said suit property on tenancy basis.

Furthermore the plaintiff at his own cost prepared a revised building plan for the purpose of obtaining sanction from the municipal authorities and forwarded it to the said defendants for obtaining their signatures but they refused to sign the same.

8. That Smt. Arati Das, the defendant No. 1 thereafter left the said premises at EC-130, Salt Lake City, Sector - I, Kolkata - 700 064, in the District of North 24-Parganas and went to live at 23, Bade Raipur Road, under Post Office Jadavpur, Kolkata - 700 032 with her married daughter the defendant No. 2 and the son being the defendant No. 3 also left the said house who was subsequently declared insolvent by the Hon'ble High Court in its Original Civil Jurisdiction in Insolvency Case No. 1C-2 of 2003.

9. That the defendant No. 1, however, after taking so much amount of money created obstruction to the work by the plaintiff and also filed an application under Section 144(2) Cr. P.C. being M. P. Case No. 18 of 2003 before the Sub-Divisional Executive Magistrate at Salt Lake and an order was obtained from that

Checked by

DISTRICT JUDGES' COPYING DEPT.
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COPYING DEPT.
Barasat, North 24 Parganas

Executive Magistrate and accordingly the plaintiff stopped further work at the said suit property.

10. The defendant No. 1 also filed an F.I.R on 30.04.2003 against the plaintiff before the Bidhannagar (North) Police Station being Bidhannagar P.S. Case No. 67 dated 30.04.2003 was started which was registered as G.R. Case No. 2016 of 2005 in the court of the Ld. ACJM, Bidhannagar.

11. The plaintiff appeared in the said criminal case and faced the trial and upon taking evidences the Ld. Assistant Chief Judicial Magistrate at Bidhannagar found the plaintiff not guilty and accordingly he was acquitted by and under the judgement and order dated 06.06.2007 under Section 255(1) of the Criminal Procedure Code.

12. The defendant No. 1 further filed a Title Suit being No. 103 of 2003 before this Learned Court against the plaintiff inter alia alleging that the plaintiff on 20.01.2003 made attempts for forcible possession of the suit property and prayed for an injunction restraining the plaintiff from disturbing peaceful possession of the plaintiff and from changing the nature and character of the said suit property.

13. The plaintiff appeared in the said title suit as defendant and filed the written statement denying all the allegations made against him.

Checked By

DISTRICT JUDGES' COURTS OF
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURTS
BARASAT, NORTH 24 PARGANAS

(17)

14. That ultimately the plaintiff in the said title suit and the defendant No. 1 herein filed an application before this Learned Court stating that the matter and the dispute involved have been settled out of court by and between the said parties on the terms and conditions as envisaged in the compromise petition and thereafter prayed for dismissal of the said suit for non-prosecution and accordingly, the said title suit was dismissed for non-prosecution on 29.05.2007. The plaintiff thereafter further paid a sum of Rs. 1,02,000/- on 30th July, 2007 and the defendant Nos. 1 and 2 have acknowledged the receipt of the total amount of Rs. 10,28,000/- till the date of execution of the power of attorney.

15. That the defendant Nos. 1 and 2, according to the terms of the said compromise petition, executed a Power of Attorney dated 16th April, 2008 permitting the said plaintiff as the constituted attorney to proceed with the work of construction / development of the said suit property without any interference / objection / non co-operation from the said defendants. Subsequently the plaintiff also paid Rs. 25,000/- on 04.10.2008 to the defendant No. 1 which has also been duly acknowledged by the defendant No. 1 in the presence of witness being the defendant No. 2. Thus the total amount of Rs. 10,53,000/- has been paid by the plaintiff to the defendant Nos. 1 and 2 which has been duly acknowledged by the said defendant Nos. 1 and 2.

16. That the plaintiff also got the building plan prepared and sanctioned on 16.06.08 for raising the first and the second floor of the said building on the said suit property and wanted to raise the construction as per the Agreement and the

Checked by

DISTRICT JUDGES' COURTING OFFICE
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURTING OFFICE
North 24 Parganas

Power of Attorney strictly in accordance with the said sanctioned building plan but the defendants again started creating obstruction to the said construction work at the said suit property and refused to offer any co-operation.

17. After discussions and persuasion, the plaintiff and the defendant No. 1 agreed that the plaintiff will carry on the said construction work and the defendant No. 1 also agreed that the defendant No. 1 will make a declaration that due to her old age it was not possible for her to represent everywhere before and during the said construction work and that the plaintiff will represent the defendant No. 1 as the authorised agent and do the needful on her behalf according to the said General Power of Attorney dated 11.04.2002. According to that arrangement the defendant No. 1 agreed to execute an affidavit before the Notary Public reiterating the previous terms and conditions.

18. That according to the said arrangement the plaintiff prepared the declaration and the affidavit on stamp papers purchased on 06.10.2009 and 09.12.2009 respectively but when the plaintiff placed the said two documents before the defendant No. 1 for obtaining the signature of the defendant No. 1, she backed out. Thereafter the plaintiff on several occasions requested the defendant No. 1 to co-operate with the plaintiff to complete the rest of the construction work as per the sanctioned plan but the defendant No. 1 refused to co-operate to the detriment of the interests of the plaintiff. The defendant No. 1 threatened that the said suit property would be transferred to a third party to make pecuniary gains.

DISTRICT JUDGES' COURTS OF
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURTS
North 24 Parganas

19. That recently the plaintiff have come to know that the defendant Nos. 2 and 3 have approached the Competent Authority to accord permission to transfer their respective shares in the said suit property to their mother, the defendant No. 1 by a deed of gift without intimating and obtaining the consent of the plaintiff and therefore the plaintiff wrote a letter to the said Competent Authority on 23.08.2010 stating the entire facts regarding the said suit property and requesting them not to accord the permission as prayed for by the defendants. The said Competent Authority by and under a letter dated 9th September, 2010 asked the plaintiff to appear at their office on 14.09.2010 for the purpose of hearing and on 14.09.2010, the plaintiff went to the said office of the Competent Authority and in course of the hearing was told that the plaintiff should approach the competent civil court for obtaining an appropriate order. If the defendant Nos. 2 and 3 succeed to transfer their share of the said suit property in favour of their mother, the defendant No. 1, the plaintiff reasonably apprehends that the defendant No. 1 may transfer the said suit property to a third party to the detriment of the interests of the plaintiff created in the said suit property by way of agreement and affidavits as stated hereinabove. The defendants have also usurped Rs. 10,53,000/- from the plaintiff and if the defendants succeed in the said plan, the plaintiff shall stand to suffer irreparable loss and injury not compensable by money value.

20. Therefore, the plaintiff files this suit for injunction restraining the defendant Nos. 2 and 3 from transferring their share to the defendant No. 1 or to any third party.

FILED BY
TARAK MUKHERJEE
ADVOCATE

Checked by

DISTRICT JUDGES' COPYING DEPT.
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COPYING DEPT.
Barasat, North 24 Parganas

1 OCT 2013
SECRET. COURT
FILED BY

21. The plaintiff also prays for injunction restraining the defendant Nos. 2 and 3 from causing any hindrance and obstruction in raising the construction of the first floor and the second floor of the said building on the said suit property as per agreements, power of attorney and the sanctioned building plan.

22. It is stated that due to such acts of the defendants which is causing delay in completing the construction work of the first floor and the second floor, the plaintiff is suffering financial loss continuously as because he has already paid Rs. 10,53,000/- (Rupees Ten Lakhs Fifty Thousand only) to the defendants and cost of materials and labour charges to the tune of Rs. 2,00,000/- (Rupees Two Lakhs only) approximately which the plaintiff has invested while carrying on the said construction work in the front portion of the said building on the said suit property in terms of the said sanctioned building plan

23. That the cause of action arose on 11.04.2002, thereafter from time to time and lastly on 16.04.2008 when the irrevocable power of attorney was executed by the defendant Nos. 1 and 2 in favour of the plaintiff at EC-130, Salt Lake City, Sector - 1, Kolkata - 700 064, under Police Station Bidhannagar (North), in the District of North 24-Parganas within the jurisdiction of this Learned Court.

24. That for the purpose of jurisdiction and payment of court fees the suit is valued at Rs. 69,000/- and the requisite court fees has been paid thereon.

DISTRICT JUDGES' COURTS OF
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURTS
NORTH 24 PARGANAS

1 OCT 2006
COURT, DHAKA.

(21)
FILED BY
TARAK

25. That there is no unnecessary delay in filing the instant suit.

The plaintiff, therefore prays for :-

a) Leave under Order 2 Rule 2 of the Civil Procedure Code;

b) Declaration that the plaintiff has the right to do the construction work as per agreement dated 11.04.2002 and the power of attorney dated 11.04.2002;

c) Injunction restraining the defendant Nos. 2 and 3 from transferring their respective shares in the said suit property to the defendant No. 1;

d) Injunction restraining the defendant No. 1 from transferring the suit property or any part or portion thereof to any third person;

e) Injunction restraining the defendants from causing any obstruction or hindrance in the construction work by

TAHMINA ALAM ★ MOTAHER
(Regd. No. 1163)

DISTRICT JUDGES' COURING DEPT.
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURING DEPT.
Barasat, North 24 Parganas

1 OCT 2018

FILED BY

TARAF MUNIR RIFF

the plaintiff according to the agreements and power of attorney executed by the defendants in favour of the plaintiff in terms with the sanctioned building plan;

f) Injunction restraining the defendant Nos. 1, 2 and 3 from engaging or appointing any other person or persons to make construction work in the suit property excepting the plaintiff;

g) Temporary / ad-interim injunction in terms of prayers (b), (c), (d), (e) and (f) above

h) Receiver;

i) Cost of the suit and incidentals thereto.

j) Any other relief or reliefs to which the plaintiff is entitled in law and in equity.

And for this act of kindness your petitioner, as in duty bound, shall ever pray.

DISTRICT JUDGES' COURING OF
11 MAY 2018
BARASAT, NORTH 24

DISTRICT JUDGE'S COURING OF
BARASAT, NORTH 24 PARGANAS

1 OCT 2010

FILED BY
TARAK MOHAN BOSE

List of copies of documents filed :-

1. Deed of Lease dated 20.08.1970.

2. Death Certificate of original Lessee Bishnupada Das

3. Agreement for Assignment executed by the defendants dated 11.04.02

4. General Power of Attorney executed by the defendants dated 11.04.02

5. Money Receipts dated 12.11.02, 02.12.02, 05.12.02, 06.12.02, 30.07.07 & 04.10.08

6. Debabrata Gupta's letter to the Chairman, Bidhannagar Municipality dated 18.04.07

7. Declaration of insolvency of Amit Kumar Das, defendant No. 3 by the Hon'ble High Court in Insolvency Case No. 10 2 of 2003.

8. Acquital in Criminal Case G.R. No. 2016/05 -- Judgement dated 06.06.07

9. Compromise petition filed in T.S. No. 103/03.

10. Non-prosecution of T.S. No. 103/03 ---- Order dated 29.05.2007.

11. Irrevocable Power of Attorney executed by the defendants dated 16.04.08

12. 2 Nos. draft affidavit-cum-declaration of Smt Arati Das, defendant No. 1

13. Complaint letter of plaintiff to the Competent Authority dated 23.08.10.

14. Letter of hearing of the Competent Authority to plaintiff dated 09.09.10.

EBUNNESA ALAM NOTARY
Govt. of W.B.

DISTRICT JUDGES' COSVING OF
11 MAY 2018
BARASAT, NORTH 24

DISTRICT JUDGE'S COSVING
NORTH 24 PARGANAS

SCHEDULE :

All that the rent free land measuring 4.2395 cottahs being the land a little more or less together with the partly built one storied building situated in plot No. 130 in Block EC, Sector - I, Salt Lake City, under Police Station Bidhannagar (North), Sub-registration office at Bidhannagar, in the District of North 24-Parganas butted and bounded by :

On the North	:	Plot No. 24 (5k), 25 (5k) and 129 (4k) in Block EC.
On the South	:	Plot No. 131 (4k) in Block EC & Type VI Road.
On the East	:	Plot No. 129 (4k) in Block EC & Type VI Road.
On the West	:	Plot No. 24 (5k) and 131 (4k) in Block EC.

Checked by

DISTRICT JUDGES' COORDINATING OFFICE
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COORDINATING OFFICE
Barasat, North 24 Parganas

BEFORE THE NOTARY PUBLIC
BARASAT NORTH 24 PARGANAS

22160

AFFIDAVIT

I, Tarun Kumar Das, son of Late Santi Ranjan Das, aged about 55 years, by faith Hindu, by occupation business, residing at EE/13/8, Salt Lake City, Sector - II, Kolkata - 700 091, under Police Station Bidhannagar (East), in the District of North 24-Parganas, do hereby solemnly affirm and say as follows :

1. That I am the plaintiff in the above case and am well conversant with the facts and circumstances of the case and I am competent to file the instant suit.

2. That the statements made in paragraphs 01/1 to 2 are true to my knowledge derived from the records which I verily believe to be true and the rest are my respectful submissions before this Learned Court.

I sign this affidavit on this the 1st day of October, 2010 at the court premises.

Tarun Kr Das.

Deponent

Prepared in my office

Tarak Mukherjee

Advocate

Identified by me

Tarak Mukherjee 01/10/10

Advocate

Solemnly Affirmed on 01/10/10 by the [illegible] identified by Advocate T. Mukherjee

Notary Barasat North 24 Pgs. Govt. of India

01 OCT 2010

THIS DOCUMENT CONTAINS PAGES AND IS CHECKED BY NOTARY CLERK

DISTRICT JUDGES' COURTS OF
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURTS
Barasat, North 24 Parganas

(26)

FILED BY
TARAK MUKHERJEE
ADVOCATE

VERIFICATION

I, Tarun Kumar Das, son of Late Santi Ranjan Das, aged about 55 years, by faith Hindu, by occupation business, residing at EE/13/8, Salt Lake City, Sector - II, Kolkata - 700 091, under Police Station Bidhannagar (East), in the District of North 24-Parganas, do hereby solemnly verify and say as follows :

1. That I am the plaintiff in the above case and am well conversant with the facts and circumstances of the case and am competent to file the suit.

2. That the statements made in paragraphs 01 to 23 are true to my knowledge derived from the records which I verily believe to be true and the rest are my respectful submissions before this Learned Court.

I sign this verification on this the 15th day of October, 2010 at the court premises.

Tarun Kr. Das

Deponent

Prepared in my office

Tarak Mukherjee

Advocate

JEBUNNESA ALAM
Govt. of W.B.
(Regd. No. 1413)
BARASAT

Identified by me

Tarak Mukherjee

Advocate

DISTRICT JUDGES' COURTS OF
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURTS
North 24 Parganas

West Bengal Form No. 3856
H. C. Criminal Form No. (M) 2

C1

Sub-Judge

Ex parte

(1)

Title C.T.A-36/12

FORM FOR RECORDING DEPOSITION

P.S. 105/10

471
6015
Deposition 1.2
Cheque 1.2
Bank 1.2
13.11

The Deposition of witness No. for the

*Strike out words as may be necessary.

aged about 56 years, taken on oath or *solemn affirmation before me

the Civil Judge (Senior Division) 2nd Court, Barasat

of this 16th day of November 2011

My name is Tarun Kumar Das

My father's / husband's name is Late Bhanu Ranjan Das

I am by religion Hindu

My home is at Mouza E.R. 1318 Salt Lake City Kol-91

Police Station Birbhum nagar (East)

District

I reside at present in Mouza

Police Station

District North 24 Pgs.

where I am

Tarun Kumar Das

I have filed affidavit in chief in this suit. The affidavit in chief has been drafted as per my instruction. I know the contents of the affidavit. After going through the same I put my signature there. This is my affidavit in chief. I have filed some documents. (The following documents are marked as Exhibits:-)

1. Death certificate (Ex.1)
2. Agreement (Ex.2)
3. General power of Attorney (Ex.3)
4. Money receipts (Ex.4 series)
5. The certified copy of order sheet of GR 2016/2005 (Ex.5)

Checked by

DISTRICT JUDGES' COPYING DEPT.
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COPYING DEPT.
Barasat, North 24 Parganas

6. Certified copy of order sheets passed in T.S 103/03 of this Court (Ex.6)
7. Power of Attorney dated 16.04.08 (Ex.7)
8. Applications to U.D Department dated 23.08.10 (Ex.8) (series)
9. Original building plan (Ex.9)
10. Certified copy of the order s of the Hon'ble High Court (Ex.10)

D/c by me.

Judge,

Read over Explained and admitted to be correct

16/11/11

C.J.(Sr.Divn.)2nd court.

16/11/11

16.11.2011

Checked by

DISTRICT JUDGES' COURTS OF
11 MAY 2018
BARASAT, NORTH 24 PARGANAS

DISTRICT JUDGE'S COURTS
North 24 Parganas