

09.12.2020
Sl. No.5
srm

C.O. No. 1493 of 2020

Molla Bajle Rahaman & Anr.

Vs.

Molla Lutfar Rahaman

Mr. S. G. Chowdhury

...for the Petitioners.

This is an application challenging an order dated March 16, 2020 passed by the learned Civil Judge (Junior Division), Additional Court, Serampore in Title Suit No.340 of 2017. The petitioners are aggrieved by an order of rejection of an application for local investigation under Order XXVI Rule 9 of the Code of Civil Procedure.

The learned Court below upon considering the documents on record, registered *hebanama*, on the strength of which the petitioners/plaintiffs have got A-1 schedule property, has come to the conclusion that no such A-3 schedule passage in respect of which a local investigation has been sought for has been mentioned in *hebanama*. The learned Court below has also come to a conclusion that there is no boundary dispute with regard to the A and A-1 schedule property. The demarcation of A and A-1 schedule property are clear, according to the learned Court below.

The allegation in the plaint is that the passage for regress and egress is being blocked by the defendant. This is a matter for trial and it appears from the plaint that the petitioners have also filed the suit for declaration of their title in respect of A-1 schedule property, further declaration that A-3 schedule property is a passage and mandatory injunction directing the defendant to remove the construction from the A-3 schedule property. It is for the plaintiffs to prove the A-3 schedule property existed as a passage. The plaintiffs can also pray for any ad-interim injunction in accordance with law. The learned Court below has come to the conclusion that allowing the application for local investigation would be allowing the plaintiffs to fish out evidence which is not permitted as there was no mention of A-3 schedule passage in the deeds or in any document. Moreover, the plaintiffs and the defendant are the co-sharers and there is no partition by metes and bounds but as per the conclusion arrived by the learned Court below, boundary of the respective areas held by the parties are not in dispute.

I do not find any reason to interfere with the order impugned.

This revisional application is, thus, disposed of.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)