

02.03.2021
Court No. 19
Item No.08
CP

C.O. 280 of 2021

Sri Prasanta Chowdhury & anr.
vs.
Madan Das & ors.

Mr. Ayan Banerjee
Mr. Soumo Chaudhury

.....for the petitioners.

Mr. Kajal Roy

.....for the opposite parties 1 and 2.

This revisional application arises out of an order dated February 24, 2020, passed by the learned Civil Judge (Junior Division), Additional Court, Chandernagore, Hooghly in Title Suit No. 391 of 2017. The petitioners are aggrieved by an order of rejection of an application under Order 26 Rule 9 of the CPC.

According to the petitioner, the said order suffers from various irregularities. First and foremost, that the issue raised by the petitioners as to the existence of two rooms of which the petitioners are the tenants, is hit by principles of res judicata in view of the decree passed in Title Suit No. 1563 of 2014. The observation that there was an admission in the written statement as to the existence of one room instead of two rooms in the written statement filed in Title Suit No. 1563 of 2014, was incorrect.

That pursuant to the leave of this court the application for local investigation was filed but the learned court below failed to appreciate the same.

Mr. Banerjee, learned advocate appearing for the petitioners, submits that the appropriate remedy of the petitioners would be under Order 26 Rule 9 of the CPC as the description of the property was in dispute. He relies on the decision of this court in the matter of Nandarani Bhandari & ors. vs. Pratima Bhandari & anr., reported in 2005 (2) CLJ (Cal) 187. He next submitted that while disallowing an application under Order 39 Rule 7 of the CPC, this court was of the opinion that the fact whether the petitioners were in possession of two rooms or one room could be brought on record either by evidence or otherwise. According to him, the expression 'otherwise' in the order of this court amounted to a liberty given to the petitioners to pray for an order of local investigation.

Mr. Roy, learned advocate appearing for the opposite parties 1 and 2, submits that the order impugned has been correctly passed and an application under Order 26 and Rule 9 of the CPC could not be permitted at this stage as it would amount to fishing out evidence.

Having heard the learned advocates for the respective parties, I find that the contention of the

petitioners that they are in possession of two rooms in the suit property, is a matter which can be proved in evidence. Local investigation are allowed when there are disputes with regard to boundaries or location and description of a property but not with regard to the quantum of rooms in possession of a party.

The petitioners are at liberty to prove the quantum of their possession in respect of the tenancy in question by evidence. The point shall be independently looked into at the trial of the suit as the decree in the earlier Title Suit has been stayed but the decree in the Title Suit can be used for corroboration of the case of the defendants in terms of the provision of the law of evidence.

With regard to the decisions cited by Mr. Banerjee, the facts of the case are completely distinguishable. In the case of Nandarani Bhandari (supra), the contention was with regard to the description and location of the suit property sought to be preempted. The description of the suit property mentioned 'kuchcha' road to the north. Whereas it was the contention of the opposite party in the said suit that the area in the north had already been sold out and, as such, under such circumstances in view of the confusion created by the description of the suit property and its location in the deed of conveyance,

the court allowed local investigation. Such is not the case in this revisional application.

The revisional application is dismissed. There shall be no order as to costs.

The learned trial court shall proceed in accordance with law on the basis of the evidence before it. The learned Trial Judge is also directed to dispose of the suit expeditiously.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)