

19.02.2021
Court No. 19
Item No.02
CP

C.O. 319 of 2021

Abdul Hamid Laskar
vs.
M/s. A. S. Construction & ors.

(via video conference)

Ms. Sabana Hossain

.....for the petitioner.

Mr. Aniruddha Chatterjee
Mr. Sounak Bhattacharya

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

The revisional application is directed against an order dated January 21, 2021, passed by the learned Civil Judge (Junior Division), 2nd Court at Baruipur in Title Suit No. 151 of 2020. The petitioner is aggrieved by the order as the learned court below allowed an application for appointment of an advocate commissioner to conduct a local inspection of the suit premises along with the suit plot as also plot no. 395 which is a plot contiguous to the suit plot.

The contention of the petitioner is that the dispute involved in the suit is a boundary dispute and the advocate commissioner was not competent to make an investigation as to whether there has been any encroachment in plot no. 401 when the defendants made their construction on plot no. 395.

According to Ms. Hossain, learned advocate for the petitioner, the appointment of the advocate commissioner and the points for inspection would only enable the defendants to fish out evidence. It is further contended that inspection on the non-suit plot would in no way be in the aid of a decision either in the application for injunction or in the suit. She relies on the decision of the Apex Court in the matter of *Lodna Colliery Co. Ltd. vs. Bholanath Rai & ors.*, reported in AIR 1954 Cal 233, in support of her contention that whether there was construction on the suit plot or there was construction only on plot no. 395 were matters of local investigation and not for local inspection.

Mr. Chatterjee, learned advocate appearing on behalf of the opposite parties, submits that the application for local inspection was filed in aid of disposal of the application for temporary injunction. According to him, the case of the defendants is that the construction was almost completed and at that advanced stage of construction there should not be any investigation and in aid of such submission the defendants wanted to establish before the court that there was no scope of ad-interim injunction or an order of injunction when substantial construction was done. He further submitted that the points for investigation were only with the nature of

construction that was done. The points for local inspection are as follows:

“1) To drawn (sic draw) a rough sketch map of the suit plot No. 401 and adjoining R.S. Plot No. 395 situates in the west and to show the construction thereon in details.

2) To note any construction is in existence over the suit land.

3) To note the extend (sic extent) of the construction if any exist upon R.S. Plot No. 395 of Mouza – Kumrakhali in details.

4) Local feature.”

Mr. Chatterjee further submits that before a court can pass an order of injunction, or *status quo* the status of the property was necessary to be taken into account and, as such, the application for local inspection was filed in order to show before the court that the building was near completion on plot no. 395.

I am in agreement with Ms. Hossain on the score that with regard to allegation of encroachment, local inspection would not serve the purpose but it should be a survey passed commissioner who would be equipped to ascertain any encroachment of the suit land due to the construction made by the defendants. However, point nos. 1 and 3 as mentioned in the application for local inspection can be allowed in order to ascertain the status of the property as it stands today. This does not mean that the plaintiff will not have a chance to file an application to prove their case of encroachment by praying for appointment of a survey passed

commissioner to conduct a local investigation, in support of their contention of encroachment of the construction into R.S. plot no. 401. The local inspection as prayed for is only to ascertain the status of plot no. 401 and the extent of construction on plot no. 395.

The order impugned is modified to the above extent that the learned advocate commissioner shall conduct the local inspection on point nos. 1 and 3 only and file a report. The report of the advocate commissioner will not be construed as a finding on encroachment, boundaries and allegations with regard to such encroachment. The report shall be restricted to the disposal of the injunction application.

Nothing prevents the plaintiff from filing appropriate applications before the learned court below and if such application is filed, the same shall be disposed of urgently. The learned court below will proceed in accordance with law.

The revisional application is disposed of. There shall be no order as to costs. The order impugned is modified as above.

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.)