

S/L 24
16.03.2021
Court. No. 19
GB

C.O. 538 of 2021

Tara Vishwakarma alias Tara Debi Vishwakarma & Ors.
Vs.
Rekha Chatterjee & Ors.

(Through Video Conference)

Mr. Pinaki Ranjan Chakraborty,
Mr. Amal Kumar Banerjee.

...for the Petitioners.

This revisional application arises out of an order dated January 22, 2020 passed by the learned Civil Judge (Junior Division), 1st Court at Rampurhat, District – Birbhum in connection with Title Suit No.84 of 1998.

By the order impugned, the learned court below rejected an application for local investigation filed by the defendants/petitioners. According to the learned court below, local investigation was not necessary as the suit which was 20 years' old, was for declaration and permanent injunction. There were no prayers for partition, recovery of khas possession of the encroached area or for mandatory injunction. As such, as per the learned court below local investigation under Order 26, Rule 9 of the Code of Civil Procedure was not necessary. It was only a ploy for fishing out the evidence.

I am in agreement with the learned court below and I do not find any reason to interfere with the order impugned. The existence of the pathway and use of the same, if any, by

the defendants can be proved by evidence. Once the plaintiffs have discharged their onus about the title ownership and possession over the disputed suit property, the defendant shall discharge their own burden of proving their case.

The revisional application is disposed of without any interference with the order impugned.

This order is restricted to the denial of the prayer for the local investigation. However, the petitioner shall be at liberty to pay the costs in the learned court below as per the direction of the learned court below with three weeks from date.

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.)