

S/L 6
19.02.2021
Court. No. 19
GB

C.O. 1234 of 2018

Alauddin Molla & Ors.
Vs.
Md. Abdur Rahim & Ors.

(Through Video Conference)

Mr. Sounak Bhattacharyya.

...for the Petitioners.

Affidavit-of-service filed in Court today be taken on record.

Despite service none appears on behalf of the opposite parties on an earlier date.

Mr. Bhattacharya, learned advocate appearing on behalf of the petitioners submits that the learned advocate refused to accept the notice of mentioning for listing of this matter in view of the urgency involved.

On February 2, 2021 Mr. Bhattacharya was directed to serve a copy of the revisional application once again upon the opposite parties. The track report has come back with the indication that 'insufficient address'. The dispute arises out of Title Suit No.221 of 2008. The said suit was filed by the opposite parties herein. The postal articles were sent to the addresses of the opposite parties as appearing in the plaint.

Under such circumstances, it appears that the plaintiffs are avoiding service.

The revisional application has been filed against a order dated January 25, 2018 marked ' Later order' passed

by the learned Civil Judge (Junior Division), 6th Court at Alipore, District 24 Parganas (South) in Title Suit No.221 of 2008, which is being heard analogously with Title Suit No.255 of 2008.

By the said portion of the order dated January 25, 2018, the application under Order 39, Rule 7 and an application under Section 151 of the Code of Civil Procedure were rejected as being redundant. Two suits have been filed by the respective parties against each other and both are claiming right, title and interest over the suit property, namely, R.S. Dag No.3585 corresponding to C.S. Dag No.5559 and R.S. Dag No.3585 corresponding to C.S. Dag No.5553. The learned court below while rejecting the said applications, came to the conclusion that unless the possession of the plaintiff was ascertained by evidence, the question of allowing a repair of the existing structure on the suit property could not be allowed.

Mr. Bhattacharya further submits that for the said reasons an application for local inspection was filed along with an application for repair, but the learned judge wrongly held that possession was a matter of evidence and as such, the applications were redundant and there was no scope for appointment of a local commissioner or to allow repair.

Mr. Bhattacharyya submitted that repairing being an urgent requirement, the learned court below ought to have taken into consideration the applications on their own merits instead of holding that without evidence and trial of the suit,

the question of possession could not be ascertained and as such, the application for repair could not be allowed.

In the cross-suit the petitioners have claimed possession by way of cultivation on the said land, whereas, in the application for repairing the petitioners have claimed repairing of a tin shed structure. Such mention of tin shed structure is not found anywhere in the plaint and as such the question of repairing does not arise.

This suit has been filed by the opposite parties, who are plaintiffs. They are claiming title over the suit property and have categorically stated in their plaint that the entries in the record of rights with regard to the possession of the petitioners were erroneous and they were in possession. These are issues to be decided in the suit.

Yet, in my view, there is no scope for allowing the applications filed by the petitioners for the simple reason that the plaint case did not disclose any structure on the suit land of which the petitioners were in possession. Neither is it their case that the structure came into existence subsequently.

However, the learned court below is directed to expedite the hearing of the suits and conclude the same within a period of six months from date of communication of this order as both the suits are at the stage of evidence.

The revisional application is disposed of accordingly.

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.)