

S/L 16
29.09.2021
Court. No. 7
sb

CO 1348 of 2021
(Via Video Conference)

Maheswar Pandit & Ors.
Vs.
Sampa Banerjee nee Samanta & Anr.

Mr. Indranath Mukherjee, Advocate

... for the Petitioners

The defendants in a suit for declaration of title and permanent injunction has filed the instant application challenging an order being no. 132 dated March 17, 2021 passed by the learned Civil Judge (Junior Division) 2nd Court at Howrah in Title Suit No. 227 of 2007.

By the impugned order the petition under Order 26 Rule 9 of the Code of Civil Procedure filed by the petitioners herein was rejected.

Mr. Mukherjee, the learned advocate for the petitioners submits that the plaintiffs/opposite parties herein have encroached upon a portion on the northern side of the property of the petitioners being premises no. 20/2, Ram Mohan Mukherjee Lane. For the purpose of removal of such encroachment, the petitioners herein have prayed for mandatory injunction by way of counter-claim.

He further submits that the learned Trial Judge by merely relying upon a statement in the cross-examination of the D.W. 1 rejected the prayer for local investigation without appreciating that the said statement in evidence was made

prior to the incorporation of the relief for mandatory injunction by way of amendment to the counter-claim.

He further submits that in order to prove encroachment, local investigation is necessary.

I have heard the learned advocate for the petitioners and considered the materials on record.

In the counter-claim, the petitioners have alleged that the plaintiffs have illegally constructed some bricks in an around the northern side of their premises for which a prayer for mandatory injunction was made. In the counter-claim there is no sketch-map appended thereto showing the portion alleged to have been encroached by the plaintiffs.

The D.W.1 has also categorically stated in the cross-examination on June 24, 2015 that their property is demarcated and bounded by bricks. It is also not the case of the defendants that such encroachment was made after demolition of boundary wall of the property of the defendants. The defendants have not specified the encroached portion in their pleadings. In my considered view the prayer for local investigation was made only for the purpose of collection of evidence which is not permissible.

The learned Trial Judge assigned cogent reasons for rejecting the application for local investigation.

CO 1348 of 2021 accordingly stands dismissed without, however, any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Hiranmay Bhattacharyya, J.)