

14.02.2022
Ct. 21
D/L 1

C.O. 156 of 2020
(Via Video Conference)

Smt. Dropodi Kurmi
-Vs-
Sri Jagannath Singh & Ors.

Mr. Arup Kumar Das

... for the petitioner

The plaintiff of Title Suit No. 60 of 2010 (renumbered as 1 of 2016) being aggrieved by the order of rejection of his application under Section 151 of C.P.C. for local investigation of the disputed property by Surveyor Commissioner, by learned Civil Judge (Junior Division), Additional Court at Asansol on 19.09.2019 preferred this revision by invoking Article 227 of the Constitution of India.

The plaintiff has filed Title Suit against the defendants for declaration that he and proforma defendant have title over 'A' schedule property and 'B' schedule property was taken over by Asansol Municipal Corporation and built a high drain. However, the corporation sanctioned a building plan in favour of the defendants for construction of a building. The defendants on the strength of illegal

sanctioned plan is trying to raise a new construction over the drain and encroaching a portion of A schedule property.

From the record it appears that in lower court the plaintiff had filed an application for local investigation of the disputed drain and which was allowed by the learned trial court on 15.09.2012.

However, learned Court below by passing an order dated 08.04.2015 modified its last order dated 15.09.2012 with the observation that there is no need for local investigation of the disputed drain as a Misc Case under Section 24 of C.P.C. was pending before the learned District Judge, Burdwan.

In view of order passed in a Misc. Case 103 of 2014 under Section 24 of C.P.C. the case was transferred from learned Civil Judge (Junior Division), 1st Court at Asansol to the Civil Judge (Junior Division), Additional Court at Asansol.

The order under challenge shows the learned court has taken a view that plaintiff having failed to challenge the order dated 08.04.2015 by which the learned Court was pleased to hold that there is no need for local investigation and rejected the application under section 151 of C.P.C. filed by the

plaintiff for investigation of disputed property by Surveyor. While passing such order, it has also observed that due to mistake a letter was addressed to the District Judge, for appointment of Commissioner and there is no requirement for appointment of any survey knowing pleader commissioner in connection with this suit.

So, it appears the learned court below has taken a view that there is no need of local investigation of suit property by survey passed commissioner by passing the impugned order.

That apart it appears the plaintiff who has filed the suit in 2010 has failed to complete his evidence which started prior to 2014 till the day impugned order was passed as reflected from the materials on record and which prove the plaintiff by some means want to linger the matter either by getting the case transferred from one court to another or by filing a petition u/s 151 CPC seeking the same relief which the learned court below has held not necessary by paasing order dated 08.04.15 and as well by passing the impugned order. The learned trial court is the best person to say for determination of dispute between the parties the

local investigation of suit property is required or not.

Therefore, this court restrains itself from interfering with order impugned.

Accordingly, **C.O. 156 of 2020 is dismissed.**

Connected applications, if any, are disposed of.

Interim order, if any, stands discharged.

There will be no order as to cost.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)