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C.O. 1858 of 2022

**Sri Anath Bandhu Ghosh & Anr
Vs
Sri Subal Chandra Ghosh & Ors**

**Mr. Tanmoy Mukherjee, ... For the
petitioners.**

**Mr. Nilanjan Adhikari,
... For the opposite
parties.**

Petitioners assail order dated 17th June, 2022 passed by learned Civil Judge (Junior Division), 3rd Court, Diamond Harbour in Title Suit No. 93 of 2014, rejecting the prayer for local inspection under Order 26 Rule 9 of the CPC on the prayer of the petitioners/defendants.

Mr. Tanmoy Mukherjee, learned advocate appearing for the petitioners submits that the Court below has inappropriately exercised its authority, while rejecting the prayer for local investigation, without truly advertng to the facts disclosed in the written statement denying the identity of 'Ka' schedule property, and also disputing with the vagueness of 'Ka' schedule property, mentioned in the schedule to the plaint.

Mr. Mukherjee further submits that the Court below has misconstrued the averments disclosed in the written statement together with

the evidence already collected in this case, so as to find out the admission, if there be any in total disregard of written statement, wherein in most certain terms petitioner has challenged Ka schedule property.

Mr. Mukherjee further contends that the Ka schedule property having suffered vagueness, there may not be any decree granted to enforce recovery of khas possession of 'ka' schedule property.

It is incidentally submitted by Mr. Mukherjee that opposite parties are the purchasers of 'Ka' schedule property, wherein some portion of petitioners' property have been merged, which is not the purchased property of petitioners, vide their deed dated 26th December, 2005.

Mr. Mukherjee is fair enough to submit that petitioners have no objection, in the event of decree being granted permitting recovery of possession to opposite parties with respect to their purchased properties, vide their deed dated 26th December, 2005.

Per contra, Mr. Nilanjan Adhikari learned advocate appearing for the opposite parties submits that suit property has been subjected to local inspection earlier in 2016, and the local

inspection commissioner has already submitted his report, which has already been accepted.

The report of the learned inspection commissioner, however, could not be disturbed by this Court in C.O. No. 1495 of 2019.

It is replied by the learned advocate for the opposite parties that the challenge raised in this case disputing with schedule, mentioned in Ka schedule property, could have been raised earlier, but it is purposefully made at a belated stage, when the evidence of the plaintiffs has already been closed, and defendants are adducing evidence in their turn at the moment.

The entire endeavour of the petitioners is purely harrasive and dilatory one, learned advocate for the opposite parties argues.

This is a suit for declaration with a prayer for recovery of khas possession with respect to 'Ka' schedule property, and permanent injunction against the 'Kha' schedule property against the defendants.

The prayer for local investigation admittedly has not been made by the opposite parties/plaintiffs themselves. The settled proposition of law is that the plaintiffs case may not be allowed to win capitalizing the weakness of defendants case, if there be any.

For the vagueness of the schedule, if there be any, as alleged by Mr. Mukherjee, the consequent sufferings may be caused to the opposite parties/plaintiffs, but in any way it would not cause any harassment to the defendants. When it is incidentally alleged that there is a fair chance of causing encroachment of some portion of the property, held by the defendants, in the event of decree being executed with respect to the 'Ka' schedule property, the Court is of the view that defendants/petitioners are not remediless at the moment, because evidence of defendants is still continuing.

Petitioners are as such given liberty to adduce all relevant witnesses to dispel their doubt so as to facilitate the Court below in doing proper adjudication to the matter in controversy between the parties.

Petitioners are directed to make communication of this order to the learned court below.

With this observation and direction, the revisional application stands disposed of.

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

(Subhasis Dasgupta, J)