

27.09.2022
Item No.5
Ct. No.7
CHC

C.O.2353 of 2022

Palash Baran Dutta & anr.

Vs.

Sri Shib Sankar Das

Ms. Malyasree Maity

...for the petitioner

The subject-matter of challenge in this case is against the order dated 17th June, 2022, passed by learned Civil Judge (Junior Division), 1st Court, Barasat, North 24 Parganas, in Title Suit No.165 of 2003, rejecting the prayer for local investigation.

Admittedly, this is a suit originally instituted in the year 2022. In the year 2015, petitioners moved an application praying for local investigation, which was rejected by the court below on 10th July, 2015. Such rejection of local investigation was challenged in C.O.3665 of 2015. The relevant observation of this Court in C.O.3665 of 2015 has been noted by the court below, while making rejection of prayer for local investigation. The ground of rejection of the prayer for local investigation is due to the availability of a report submitted by the Revenue Inspector, supporting the contention of the defendants that there has been encroachment.

Upon consideration of such report, the coordinate Bench of this Court in C.O.3665 of 2015 opined that “*if already there is a report, which supports the case of the*

defendants, I see no reason why the application was filed for local inspection as no one is more equipped than the Revenue Officer to throw light on the local features". With this observation, the coordinate Bench of this Court in C.O.3665 of 2015 affirmed the rejection of trial court's order. The instant prayer has again been made after conclusion of the evidence, when the suit has already been set for argument. It is absolutely not encouraging one to reagitate the prayer once again at the fag end of the trial, what has already been rejected, followed by affirmance of the order by a coordinate Bench of this Court in C.O.3665 of 2015.

Being a Judge of Single Bench, this Court cannot seat over the observation made by coordinate Bench of this Court.

Upon perusal of the impugned order, this Court does not find any sufficient reasons to interfere with the order impugned.

The revisional application stands dismissed.

This would not, however, prevent the petitioners to agitate the points pertaining to the alleged encroachment, capitalising the report of the Revenue Inspector in support of the prayer for counter claim, if there be any.

The court below is directed to address such points, to be raised by the petitioners, and decide the same in

accordance with law, giving an opportunity of hearing to either of the parties in this case.

Petitioners are directed to make communication of this order to the learned court below as well as to the opposite party and his learned advocate in the court below.

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

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)