

S/L 11
24.02.2022
Court No.8
SD

FAT 430 of 2019
(Via Video Conference)

M/s. Benchmark Developers Pvt. Ltd.
Vs.
Sri Sushil Sardar & Ors.

Mr. Indranath Mukherjee
Mr. Sukanta Mondal

...for the Appellant.

Mr. Ashim Kumar Routh

...for the Respondent No.1.

In a suit for declaration and permanent injunction the trial court while declaring the shares of the plaintiffs in the 'A' Schedule property did not grant recovery of possession in respect of the land alleged to have been encroached by the defendants. The suit was heard ex parte in spite of repeated opportunities. The defendants do not appear and contest the proceedings.

Mr. Indranath Mukherjee, learned counsel appearing on behalf of the appellant, has drawn our attention to the report filed by the Advocate Commissioner that was marked as Exhibit 11 to show that the Advocate Commissioner has arrived at a finding that there has been an encroachment of 630 sq.ft. demarcated by yellow colour in the report filed by the Advocate Commissioner on March 21, 2014.

It appears from the impugned judgment and decree that report of the Advocate Commissioner was not considered by the learned Civil Judge (Senior Division), 1st Court, Barasat.

We feel that the Commissioner's report is material piece of evidence which ought to have been considered by the learned Civil Judge (Senior Division), 1st Court, Barasat while deciding the suit. Moreover, we find that the suit was decreed in part without recovery of possession.

Under such circumstances, we direct the learned Trial Judge to decide the issue with regard to the recovery of possession and other reliefs claimed in the plaint and not allowed, in the light of the report of the Advocate Commissioner and any other available materials.

However, we also wish to give a chance to the defendants to argue as the said report does not conclusive to establish the encroachment by the defendant no.1 over the plaintiff's land. No further pleadings by any of the parties shall be allowed.

The defendant no.1 shall be entitled to argue that the plaintiff even on the basis of the available record is not entitled to a decree. The learned trial court shall pass a decree afresh after considering the appellant's case and taking into consideration the observations made by us in this order.

We have not touched the part decree allowed in favour of the plaintiff and so far as the remaining claim is concerned, the same has to be decided by the trial court in terms of this order.

The learned Trial Judge is directed to dispose of the suit preferably within a period of three months from the date

of communication of this order without granting any unnecessary adjournment to either of the parties.

With the aforesaid observations, the appeal being FAT 430 of 2019 stands disposed of.

The lower court records shall immediately be send down to the learned Civil Judge (Senior Division), 1st Court, Barasat, North 24 Parganas.

The learned Registrar Administration (L&OM) must ensure the compliance of this order.

However, there shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)