

02.03.2022
Item No.08
Court No.18
AJ.

C.O. 3706 of 2019

C.A.N. 2 of 2021

C.A.N. 3 of 2022

(Through Video Conference)

Sri Kartick Chandra Guchhait

-Vs-

Manuja Bibi & Ors.

Mr. Raghunath Das,
Mr. Prasanta Bishal.
....for the petitioner.

Mr. S.P. Pahari.
....for the opposite party no.1.

Mr. Sibasis Ghosh,
Mr. Kallol Kumar Maity.
....for the opposite party no.4.

The revisional application has been brought to the list for “Extension of Interim Order” on the prayer of the petitioner, but by the consent of the parties, the matter is taken up for final disposal.

The instant revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for declaration of title and injunction and is directed against part of the Order No. 112 dated September 18, 2019 passed by the 2nd Court of the learned Additional Civil Judge (Junior Division), Contai, District Purba Medinipur in the said suit being Title Suit No. 168 of 2015.

The defendant no. 1, the opposite party no.1 herein is contesting the said suit with a

counter-claim *inter alia* for a decree of declaration of her right, title and interest over property described under the schedule 'c' appended to her written statement with counter-claim.

The defendant no.1 in the suit filed two applications; one under Section 151 of the Code of Civil Procedure for recalling of the order whereby the report of the investigation commissioner appointed at the instance of the plaintiff was accepted and the other application was for appointment of a new investigation commissioner to hold investigation in respect of the aforesaid 'c' schedule property.

The learned Trial Judge by the first part of the order impugned has dismissed the first application of the defendant no.1 thereby refused to recall the order accepting the investigation commissioner's report.

The learned Trial Judge by the second part of the said order has allowed the application filed by the defendant no.1 for holding investigation of the said 'c' schedule property on the ground that earlier investigation had not covered the said 'c' scheduled property.

The learned advocate for the petitioner submits that the first investigation was in respect of the entire properties involved in the suit and the counter-claim.

The learned advocate for the opposite party no.1 submits that the earlier investigation report was in respect of the properties appended to the plaint of the suit only which does not include the said 'c' schedule property in respect of which the defendant no.1 has a counter-claim.

The learned advocate for the opposite party no.4 supporting the contention of the learned advocate for the opposite party no. 1 draws my attention to the findings of the learned Trial Judge in the order impugned to contend that the investigation commissioner's report which has already been accepted vide Order No. 77 dated January 18, 2017 is in respect of 'k', 'k1' and 'kha' schedule property only but the said 'c' schedule property is outside the scope of the said investigation, as such, for the proper and effective adjudication of the suit, investigation in respect of the said 'c' schedule property is necessary.

Having heard the learned advocates for the parties and on perusal of the records, it appears that the investigation in respect of 'ka', 'k1' and 'kha' schedule properties has already been done and the report has already been accepted by the learned Trial Judge.

It further appears that the defendant no.1 in her counter-claim is praying decree of declaration of title and decree of permanent

injunction in respect of the properties described under schedule 'c' appended to the written statement with counter-claim.

The prayer 'A' of the said counter-claim clearly indicates that 'c' schedule property is land measuring about 3 decimal which is part of the properties described under schedule 'ka' appended to the plaint of the suit.

Investigation in respect of the 'ka' schedule property has already been done. The learned Trial Judge, therefore, has acted with material irregularity in holding that the said 'c' schedule property has not been investigated by the appointed commissioner.

For the reasons discussed above, the part of the order whereby the prayer of defendant no.1 was allowed for appointment of another survey passed commissioner to hold investigation in respect of 'c' schedule property is not sustainable and is accordingly set aside.

C.O. 3706 of 2019 is allowed with the above terms.

The suit is pending since 2000. This Court is informed that the suit and the counter-claim thereto are ready for disposal.

The learned Trial Judge, therefore, is requested to dispose of the said suit expeditiously in accordance with law, preferably

within six available effective working months of the said Court from date of communication of this order and in doing so, shall not grant prayer of the parties for any unnecessary adjournment.

In view of the disposal of the main revisional application, the connected applications being C.A.N. 2 of 2021 and C.A.N. 3 of 2022 for extension of interim orders have become infructuous and are also disposed of accordingly.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)