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Ct. 18
26.04.2022

C.O. No. 3932 of 2019

**Smt. Sipra Das
Vs.
Sri Rabin Das & Ors.**

Mr. Nilanjan Bhattacharjee,
Ms. Paramita Roy ... For the petitioner.

Ms. Shreya Trivedi ... For the opposite parties.

The 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 which is directed against the order dated August 19, 2019 passed by the 2nd Court of learned Civil Judge, (Junior Division) at Howrah in the said suit being Title Suit No. 476 of 2018.

The plaintiff and the defendants are the owners of adjacent properties. The predecessor-in-interest of the vendors of the petitioner by virtue of a deed of partition dated February 12, 1969 had acquired right, title and interest over the suit property.

The plaintiff has filed the connected suit for declaration of his right, title and interest over the suit property and also for a decree of mandatory injunction.

The plaintiff in the plaint has alleged that between his property and the property of the defendants there is a common wall. The defendants have put a night soil pipe line over the said common wall thereby have encroached upon the suit property. The plaintiff has also alleged aerial encroachment by the defendants in his property.

The plaintiff in order to elicit the topography of the suit property applied for appointment of a survey pass commissioner under Order XXVI Rule 9 of the Code of Civil Procedure.

The learned Trial Judge by the order impugned has dismissed the said application holding that in the said partition deed there is no existence of any common boundary wall.

Appointment of an investigation commissioner to hold inspection of the suit property to bring the real picture of it before the Court is necessary for the proper and effective disposal of the disputes between the parties, particularly when there is allegation of encroachment. Non-mentioning of the common wall in the deed of partition of 1969 is not of much relevance in deciding the said application.

The order impugned is therefore set aside. The said application filed by the petitioner is allowed.

The learned Trial Judge is requested to appoint a survey pass Commissioner at the costs of the plaintiff for holding investigation of the suit property on the points mentioned in the said application.

C.O. 3932 of 2019 is allowed with the above terms without any 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.)