

Item No. 8
18.07.2023
Court. No. 19
GB

C.O. 144 of 2023
With
CAN 1 of 2023

Nirmala Mondal & Ors.
Vs.
Sudhir Baila & Ors.

Mr. Dipayan Kundu

...for the Petitioners.

Mr. Sanjib Seth

...for the Opposite Party Nos.1 to 4, 6 & 7.

Mr. Seth, learned advocate appears on behalf of the opposite party nos.1 to 4, 6 and 7 and raises objection with regard to the hearing of the revisional application on the ground that the opposite party no.5, namely, Ram Prasad Bailay expired but his legal heirs have not been brought on record.

Mr. Kundu, learned advocate for the petitioners submits that after the said opposite party died, it was incumbent upon the defendants to inform the plaintiff about such death. No such information was received. Thus, the provision of Order 22, Rule 10A of the Code of Civil Procedure was not complied with by the defendants in the learned trial court. Mr. Kundu submits that the suit can proceed against the other defendants who are already on record and the suit would not abate as a whole. He does not want to proceed against the heirs and legal representatives of the deceased defendant no.5.

Accordingly, the name of the deceased defendant no.5 be expunged from the array of opposite parties in the cause title of this revisional application.

The petitioners have filed this revisional application challenging an order dated May12, 2022, passed by the learned Civil Judge (Junior Division), 5th Court at Howrah in Title Suit No.90 of 2010. By the order impugned, the learned court below rejected an application for local investigation filed by the plaintiffs/petitioners on the ground that the plaint case did not disclose that the main lis in the suit was in respect of a common passage. Moreover, relaying of the property to ascertain who was the owner of the suit property, could not be allowed by local investigation as the same would amount to fishing out evidence.

Upon reading the plaint, it appears to the Court that the petitioners' specific case was that the defendants had forcefully dug up the land of the petitioners situated at CS Dag No.128 of Mouza-Manickpur, and taken electricity connection by laying underground cables through the exclusive land of the petitioners. Paragraph 3 which talks about a passage used by the villagers, does not have any connection with the cause of action in the suit which has been pleaded in Paragraph 4 of the plaint. Paragraph 8 of the plaint also discloses that the plaintiffs are the exclusive owners and occupiers of Dag No.128 and were entitled to a mandatory injunction directing removal of the underground electric line installed through Dag No.128.

Hence, the learned court below did not err in holding that the plaint case did not talk about any boundary dispute or any dispute over a common passage.

This Court finds that the specific contention of the plaintiffs were that the defendants had dug up Dag No.128, which was the exclusive property of the plaintiffs, in order to instal an underground electric line. It is for the plaintiffs to prove their ownership with regard to the said dag.

The application for local investigation was filed for appointment of an advocate commissioner for identification of the property and to ascertain who was the actual owner and occupier of Dag No.128. Such prayer cannot be allowed as the same would amount to fishing out evidence. The plaintiffs have to prove their right, title and interest in respect of the property in question as asserted in the plaint case.

Accordingly, the revisional application along with the connected application are disposed of.

However, rejection of this revisional application shall not preclude the learned court from proceeding expeditiously with the suit and disposing of the same within a period of six months from the next date fixed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)