

S/L 8
12.04.2023
Court. No. 12
Suwayan

CO 64 of 2018

**Sri Asok Paul & Ors.
Vs.
Sri Biswajit Paul & Ors.**

*Mr. Sayan Sinha
Mr. Adil Naser*

...for the petitioners.

Learned Advocate for the defendants/petitioners are present.

None appears on behalf of the plaintiffs/opposite parties.

On perusal of the report dated 29.03.2023 as given by the department, it reveals that on behalf of the plaintiffs/opposite parties no Vokatnama has been filed. Since the appearance of the plaintiffs/opposite parties in the instant revisional application cannot be secured in spite of best effort, this Court proposes to proceed with the instant revisional application *ex parte*.

Heard Mr. Sinha, learned Advocate for the defendants/petitioners at length in support of the instant revisional application. Perused the entire materials as placed before this Court.

In this revisional application the Order No. 10 dated October 31, 2017 as passed by the learned Civil Judge (Senior Division), Uluberia in Title Suit No. 191 of 2016 has been assailed.

By the impugned order learned Trial Court in a suit for partition allowed the plaintiffs' application under Section 151 of the Code of Civil Procedure and permitted

them to repair the walls of their existing house on suit plot No. 158 (RS), to construct a concrete roof thereon and further to construct a room on the said roof at their own cost. The defendants felt aggrieved and, thus, preferred the instant revisional application.

In course of his argument, Mr. Sinha, learned Advocate for the defendants/petitioners at the very outset draws attention of this Court to the 'A' schedule of the plaint which has been filed before the learned Trial Court. Attention of this Court is also drawn to the petition under Section 151 of the Code of Civil Procedure as filed by the plaintiff before the learned Trial Court. It is argued that on perusal of the plaint as filed in Title Suit No. 191 of 2016 more specifically 'A' schedule of the plaint, it would reveal that there is no whisper of any structure over suit plot No. 158. It is argued that while disposing the petition under Section 151 of the Code of Civil Procedure, learned Trial Court has failed to visualize the said fact and mechanically allowed the petition as filed by the plaintiffs.

On perusal of the photocopy of the plaint *vis a vis* the copy of the petition under Section 151 of the Code of Civil Procedure as filed by the plaintiffs in Title Suit No. 191 of 2016 it reveals to this Court that admittedly in the plaint there is no whisper that there exists any structure on suit plot No. 158. Prior to disposal of the petition under Section 151 of the Code of Civil Procedure as filed by the plaintiffs, learned Trial Court made no endeavor to ascertain as to whether there exists at all any structure over suit plot No. 158 which according to the plaintiffs is

in need of urgent repair and over which the plaintiffs intends to construct a concrete roof and to further construct a room on the newly constructed roof. It reveals further to this Court that before the learned Trial Court no sanctioned plan of the local bodies have been placed to substantiate the claim of the plaintiffs.

In view of such, this Court considers that the learned Trial Court is not at all justified to allow the petition under Section 151 of the Code of Civil Procedure without ascertaining the above facts as indicated above.

In view of such, the instant revisional application being CO 64 of 2018 is hereby allowed.

Consequently, the impugned Order No. 10 dated October 31, 2017 as passed by the learned Civil Judge (Senior Division), Uluberia in Title Suit No. 191 of 2016 is hereby set aside.

It is, however, made clear that passing of this order will not preclude the parties to the Title Suit No. 191 of 2016 to approach before the learned Trial Court with similar prayer in future, if occasion so arises.

Parties to act on the server copies of this order.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)