

29.09.2023
Sl. No.5(DL)
srm

C.O. No. 838 of 2023
Smt. Sibani Das (Kapri)
Versus
Sri Somnath Bera & Ors.

Mr. Amal Krishna Saha,
Mr. Amit Bikram Mahata
Mr. Satyajit Mandal,
...for the Petitioner.

Mr. Amitava Pain,
Mr. Partha Pratim Mukhopadhyay
...for the Opposite Parties.

The revisional application arises out of an order dated January 17, 2023 passed by the learned Civil Judge (Junior Division), Haldia, Purba Medinipur, in Title Suit No.386 of 2012.

The suit was filed for declaration and mandatory injunction. The declaration was sought for with regard to an alleged "*Baram Rasta*" which the defendants in the suit had allegedly blocked by raising a boundary wall thereby obstructing the ingress and egress of the plaintiff. Mandatory injunction, directing demolition of the wall was prayed for. The said "*Baram*" pathway was depicted as A, B and C strip. In the rough sketch map annexed to the plaint, it appears that the lands of the plaintiff was on two sides of the pathway (Strip

A). From the sketch map depicted in the application for local investigation, it appears that the A strip land was reflected between the Plot Nos.96/430 and 96/431. The allegation in the plaint is that a boundary wall was constructed on the B strip land which was towards southern portion of Plot No.96/430.

The obstruction on the B strip land amounted to blocking the free light and air in respect of the plaintiff's land. The B strip land, according to the plaint, was on the south-eastern portion. It was contended that the said pathway had been recorded in the LR record of rights. It, *prima facie*, appears from the entire reading of the plaint that the allegation is that a boundary wall of 5 ft. height was raised by the defendants on the B strip and C strip land which were pathways. The defendants had denied such allegation and had specifically stated that the description of the A, B and C lands were vague and indefinite.

In the application, the plaintiff prayed for local investigation, broadly, on the following points :-

- (a) Local investigation of Plot Nos.96/430, 96/431, 96/437 and all surrounding plots.
- (b) Location, identification of A, B and C strip plots.
- (c) Nature and character of the suit plots.

- (d) Measurement by relaying with the RS map from fixed three points, in order to ascertain the plot numbers on which A, B and C strip of lands were situated.
- (e) Whether there was any obstruction on the said plots, by raising a boundary wall.
- (f) Relay of A, B and C strip land with more than seven deeds of conveyance.

Mr. Saha, learned Advocate appearing on behalf of defendant No.4/petitioner submits that the learned court below ought not to have allowed such local investigation as the points on which the same was allowed, amounted to fishing out evidence. The plaint case was vague and only to fill up the lacuna, such application had been filed.

Mr. Pain, learned Advocate appearing on behalf of the opposite party submits that when there was a specific allegation with regard to blockage of a pathway by raising a boundary wall and there had been denial to the same in the written statement, a dispute has been raised which could not be elucidated, except by a local investigation. Hence, the court had no other option, but to allow such local investigation for better appreciation of the disputes.

Reference has been made to the decision of this Court in the matter of Balaram Ghosh vs. Sharda Devi reported in 2014(1) CHN (Cal) 269.

Having heard learned Counsel for the respective parties, this Court come to the following conclusion:

- (a) The depiction of A, B and C strip of land in the plaint and in the application for local investigation differ.
- (b) It is for the plaintiff to prove on evidence, that A, B and C strip of land has been recorded as "*Baram*" pathway in the record of rights and the same had been blocked by the defendants.
- (c) The plaintiff is unaware and uncertain with regard to exact nature, character and location of A, B and C strip of land.
- (d) By allowing the points for local investigation, the learned court below has permitted fishing of evidence.

The decision in the matter of Balaram Ghosh (*supra*) does not help the plaintiff, inasmuch as, paragraph 6 of the said judgment clearly indicates that the description of the suit property being Annexure-Y to the application before the learned court, clearly depicted separate buildings under lot A

and lot B. The plaintiff purchased lot B with specific length and breadth. Lot A belonged to the defendants with clear boundary. The common passage was also depicted with clear length and breadth. Hence, the Court was of the view that as the description of the property of the plaintiff before the learned co-ordinate Bench was clear and there were allegations of encroachment on the common passage which was clearly marked in the application, a local investigation was necessary.

In this case, the plaintiff is unaware of the plot numbers on which allegedly A, B and C strip land is situated. At this stage, this Court does not find any dispute which requires further elucidation. The positive plaintiff case is that A, B and C strip land has been entered in the LR Record of Rights as a "Baram" pathway, which was blocked by the defendants. The plaintiff has to prove this before the learned court below.

Under such circumstances and for the reasons stated hereinabove, the revisional application is allowed. The order impugned is set aside.

As the suit is an old one, the learned court below is directed to expedite the suit and dispose of the same within a year.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy
of this order.

(Shampa Sarkar, J.)