

02.02.2023
Item No.21
Ct. No.7
CHC
(disposed of)

C.O. 1280 of 2022

Sri Manoj Agarwala & ors.
Vs.
Sri Kalipada Maity & ors.

Mr. Debjit Mukherjee,
Mr. Ramendu Agarwal
...for the petitioners

Mr. Sukanta Das
...for the opposite parties

Rejection of a prayer for local investigation, in a suit for declaration, injunction and recovery of possession, is under challenge in this case.

Mr. Mukherjee, learned advocate appearing for the petitioners/plaintiffs, upon adverting to paragraph 4a of the amended copy of the plaint, submits that since the encroachment could be discovered with respect to the 'B' schedule property of land, being part and parcel of 'A' schedule land, caused at the instance of the opposite parties/defendants, a necessity thus arose for local investigation, otherwise, the proposed relief pertaining to recovery of possession of 'B' schedule land, consequent upon the encroachment caused at the instance of the opposite parties/defendants, may not be had, which the court below has erroneously rejected the same, for the 'B' schedule land being unspecified.

Per contra, Mr. Das, learned advocate appearing for the opposite parties submits at the very threshold that the very purpose of the local investigation is to cause delay to the disposal of the suit, and raises allegation against the petitioners/plaintiffs that there has been no alleged encroachment caused at the instance of opposite parties/defendants, while petitioners/plaintiffs have themselves caused encroachment in respect of their land under possession of the defendants.

The area of the land, held by the respective parties to this case, allegedly under the possession of the respective parties, is a disputed question of fact and law, which may only be set at rest upon collecting evidence at the appropriate time of trial.

Upon consideration of the submission advanced by both the parties to this case, it appears that there has been a prayer proposed in the plaint pertaining to recovery of possession with respect to 'B' schedule land.

It is also admitted position that the amendment has been allowed making incorporation of the paragraph 4a to the plaint, which is relatable to the alleged encroachment of 'B' schedule land. 'B' schedule land appears to be not specified at the moment.

The allegation and counter allegation of causing encroachment of land by the parties to this case against each other, pertaining to 'B' schedule property, in the given set of facts may only be set at rest upon holding a local investigation. In the event of local investigation being allowed to be held, there will be no prejudice caused to the opposite parties, because there are several stages left open to raise the voice of the defendants challenging the report of the Commissioner, to be submitted upon conclusion of the investigation, even in aid of Order 26 Rule 10(2) C.P.C. The alleged encroachment as set out in paragraph 4a, though specifically denied by the defendants/opposite parties, as such may be determined in aid of local investigation. The order impugned is not sustainable, and accordingly set aside.

Let there be a local investigation held with respect to the prayers proposed by the petitioners in terms of the points mentioned in the petition, upon appointing a suitable learned Investigation Commissioner, subject to the deposit of the cost, which would be assessed by the court below, as would be deemed fit and proper in accordance with law. The cost of investigation so assessed, may be deposited within three days from the date of the order of the court below, and the learned

Investigation Commissioner, so appointed by the court below, may conclude his investigation with utmost expedition upon issuing prior notice to both the parties, and submit a report for consideration in accordance with law.

It is however, clarified, that learned Investigation Commissioner may be appointed by the court below within two weeks from the date of communication of this order to the court below.

With this observation/direction, the revisional application stands disposed of.

Parties are directed to make communication of this order to the learned court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)