

16.10.2023
Court No. 19
Item no.20
CP

C.O. No. 1369 of 2023

Bhaktipada Mahato & anr.
Vs.
Netai Mahato & ors.

Mr. Soumitra Banerjee
Mr. Malay Dhar
Mr. Amarnath Sen
Mr. Souvik Naskar

.....for the petitioners.

The revisional application arises out of a order dated March 1, 2023, passed by the learned Additional District Judge Raghunathpur, Purulia in Title Appeal No. 07 of 2020.

By the said order, the learned court rejected an application for local investigation filed by the plaintiffs under Order 26 Rule 9 of the Code of Civil Procedure. By the said application, the plaintiffs prayed for local investigation on the following points:-

- a) Measurement of the suit plot in consultation with the mouza map and the boundary of the property. Preparation of a sketch map by the investigation commissioner.
- b) Measurement of the suit land as per the boundaries in the plaint.
- c) Existence of 'rasta' on any portion of the suit plot and if so, the area of the suit plot.

- d) Existence of a house on the suit plot, measurement of the house.
- e) Existence of Giridhari Mahato's residential house on the western side of the pucca road.
- f) Any other point available at the spot.

The learned court came to the following conclusions:-

- a) The measurement of the suit plot in consultation with the mouza map, would be available from evidence.
- b) The measurement of the suit land on the basis of the boundary in the plaint and the sketch map, could be proved on the basis of the evidence.
- c) The existence of a 'rasta' through the suit plot or the existence of a house on the suit plot, could be proved on the basis of evidence both oral and documentary.

Thus, the application was rejected with the aforementioned reasons. It is also pertinent to record herein, that a similar application for local investigation was filed in the suit, which had been dismissed. The said order reached its finality.

From the judgment and decree it appears that the learned Civil Judge (Junior Division), Raghunathpur, Purulia dismissed the Title Suit No.

44 of 2016, inter alia, holding that the evidence, both oral and documentary, indicated that the suit plot was an ejmali property under the joint possession of several co-sharers. Sabitri Devi, Gayatri Devi and Nibitri Devi, i.e., the vendors of the plaintiffs of 2 decimals, 1 decimal and 1 decimal of land respectively, but there were many other co-sharers of the property. The suit for declaration and consequential relief of permanent injunction was hit by the proviso to Section 34 of the Specific Relief Act as the plaintiffs did not seek partition.

The L.R. plot information, which was adduced as evidence, also indicated the same. The schedule of the plot of land mentioned by the plaintiffs in their plaint appeared to be inconsistent with the facts laid down by them. 1 decimal of land of Sabitri, did not find any mention. The schedule was vague, indefinite and the court found that the suit plot No. 436 was in possession of many co-sharers and measured a total area of 22 decimals.

The plaint case was that the defendants had started laying a foundation on the suit property. The plaint case was not accepted and the court held that the prayers of the plaintiffs for declaration and permanent injunction could not be allowed by the learned court below, without partition.

It is submitted on behalf of the plaintiffs that local investigation would result in proper identification of the area of the suit plot, that was enjoyed by the plaintiffs. The very fact that they were in possession of the said property, could be brought on record.

In my view, it is for the plaintiffs to prove their case. The plaintiffs claim to have purchased a portion of Plot No. 436 with specific boundaries. They claim to be in possession of the said specific area in terms of the deed of conveyance. They alleged that the defendants had encroached the property and were excavating earth.

The exact measurement of the suit plot and the existence of a 'rasta' are matters to be proved by the plaintiffs on the basis of evidence. Local investigation is not required in this case as it is not a boundary dispute. The plaintiffs' case is that they had clear demarcated boundaries and the defendants had started digging earth within the area owned, possessed and enjoyed by the plaintiffs.

Under such circumstances, the revisional application is disposed of without any interference with the order impugned.

All points raised in this application, shall be available to the plaintiffs at the hearing of the appeal.

The learned lower appellate court is directed to dispose of the appeal within six months from the next date fixed.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)