

June 20, 2023
Sl. No.13
Court No.19
s.biswas

CO 1660 of 2023

Mantu Chandra and others
vs.
Murtaza Halder and others

Mr. Gopal Ghosh

... for the petitioners

Mr. Sounak Bhattacharya
Mr. Chandra Nath Sarkar
Mr. Sounak Mondal
Mr. Airban Saha Roy

... for the opposite party

The petitioners are aggrieved by the order dated April 4, 2023 passed by the learned Civil Judge (Junior Division), 2nd Court at Baruipur, South 24 Parganas.

By the order impugned, the application for local investigation under Order 26 Rule 9 of the Code of Civil Procedure filed by the plaintiffs in Title Suit No.128 of 2011 was rejected on the ground that the proper description of the suit property was not mentioned in the schedule of the application.

Mr. Ghosh, learned advocate for the petitioners submits that the learned court below erred in rejecting the said application. The description of the suit property could be ascertained from the purchase deed of the petitioners and also from the schedule of the plaint.

Mr. Ghosh further submits that C.S. and R.S. Dag No.861 has been mentioned in the sale deed and in the site plan annexed to the deed. Hence, the survey passed Commissioner, should measure the

land by identifying the property on the basis of the C.S. and R.S. Dag number. According to Mr. Ghosh, L.R. record has not yet been prepared in the area.

Mr. Bhattacharya, learned advocate appearing on behalf of the opposite party/defendants denies such submissions and refers to the written statement. It has been clearly stated in the written statement that the C.S. and R.S. Dag No.861 correspond to L.R. Dag No.897. Hence, unless L.R. Dag number is mentioned in the schedule, the survey commissioner could not be appointed.

Mr. Bhattacharya further submits that relay could not be made on the basis of purchase deed, but has to be made on the basis of mouza map.

Having heard the learned advocates for the respective parties, this court is of the view that when encroachment and boundary dispute are in issue, the application under Order 26 Rule 9 of the Code of Civil Procedure must be allowed. However, as the point for survey commission lacks clarity, specification and are ambiguous, this court frames the following points for local investigation:

- A. Identify and demarcate the plaintiffs' land measuring 7 decimals in mouza Kusumba, police station Sonarpur, 24 Parganas (South) corresponding to Khatian No.269, LR and RS Dag No.861, Touzi No.259, R.S. 138, J.L.

No.50, at present under Rajpur & Sonarpur Municipality, Holding No.369, Ward No.7, consisting of five pucca rooms with asbestos roofing and partly tin roofing, along with bath & Privy, tube well and Verahdah, butted & bounded – on the North by Dag No.855 (land), on the East, by Dag No.891(land), as detailed and fully described in the title deed and the site map as also the schedule A of the plaint, by relaying the same with the mouza map.

B. Whether the defendants encroached the land measuring about 47.5 feet east to west 35.5 feet, North to South demarcated by Bamboo fencing of Mouza Kusumba, P.S. Sonarpur, Dist.-24 Parganas (South), in Khatian No.269, CS and RS Dag No.861, Touji No.259, R.S. No.138, J.L. 50 at present under Rajpur & Sonarpur Municipality Holding No.369, Ward No.7 consisting of pucca bath & privy and tubewell in the northern portion as mentioned in the point no. 'A' Schedule property.

C. To take detailed measurement of the lands and prepare a sketch map of the land of both the parties, including the encroached portion, if any.

While point no.(A) is modified to the extent, point nos.(B) and (C) remains almost the same, as per schedule of commission.

Accordingly, the order impugned is modified to the above extent. Learned survey passed commissioner shall be appointed by the learned court below, at the cost of the petitioners within a period of two weeks from the date of communication of the order. The learned court below shall pass necessary order with regard to date and modalities of such commission, as it deems fit and proper.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)