

13.12.2023
Court No. 19
Item no.02
CP

C.O. No. 2536 of 2022

Badal Biswas

Vs.

Haran Chandra Biswas & ors.

Mr. Tarak Nath Halder

.....for the petitioner.

Mr. Anupam Kr. Bhattacharyya

Mr. Dilip Kr. Mandal

....for the opposite party no.3.

Affidavit of service is taken on record.

None appears on behalf of the Chairman,
Baranagar Municipality.

The revisional application is directed against an order dated June 23, 2022 passed by the learned Civil Judge (Junior Division) at Bidhannagar, North 24 Parganas in Title Suit No. 92 of 2014.

The learned court rejected an application filed by the petitioner seeking local investigation. According to the learned court, the petition was liable to be rejected, as the points mentioned in the petition did not require investigation by appointing a survey passed commissioner.

This court is of the view that the learned court was correct to a certain extent that most of the points in the application for local investigation were vague and did not require local investigation. It also

appears that the defendants did not raise any objection to the application filed by the petitioner. However, there is an existing boundary dispute. The averments in the plaint and the written statement indicate that such dispute exists. While the plaintiff alleges encroachment and obstruction of light and air due to the projection of the building of the defendants over the plaintiff's land, the defendants allege that the plaintiff did not leave the statutory space and set back space, when the plaintiff's construction was raised. This court is of the view that local investigation is necessary in presence of the parties on the following point:-

- A) To relay and measure the respective areas of the parties and the extent of construction on the basis of their title deeds and their sanctioned building plans, and to note whether the constructed area of the defendants had encroached into any portion of the 'A' Schedule property belonging to the plaintiffs.
- B) Whether the construction of the plaintiff was without leaving the statutory spaces as required.

The learned court below shall appoint a survey passed commissioner, for the above purpose and fix the time limit for completion of the local

investigation. The remuneration of the commissioner shall be borne by the petitioner.

Needless to mention, the defendants always have a right to object to the report of the commissioner and cross examine him on his report.

The impugned order is set aside.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)