

Ct. No. 652
28.8
2023
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C.O. 3138 of 2018
Hanef Biswas & Ors.
-Versus-
Abubakkar Biswas & Ors.

Mr. Partha Pratim Roy
Mr. Anirban Das **...For the Petitioners**

Mr. Dhananjay Banerjee
Mr. Snehangshu Majumder
Ms. Oindrila Ghosh **...For the Opposite Parties**

Being aggrieved by the order No. 29 dated 10th August, 2018 passed by the learned Civil Judge (Junior Division), 3rd Court at Krishnanagar, Nadia in Title Suit No. 10 of 2017, present application under Article 227 of the Constitution of India has been preferred.

The case made out by the plaintiffs in the suit is that the suit property originally belonged to the then ‘Zamindar’ and subsequently interest was acquired by way of a ‘Amalnama’.

It is alleged that the defendants/petitioner Nos. 2 and 3 forcibly encroached a portion of suit property of suit property described in ‘B’ Schedule to the plaint. Accordingly, plaintiffs prayed for recovery of *khas* possession in respect of the said alleged encroached portion. Now, in order to prove plaintiffs’ case of encroachment he filed an application Order XXVI, Rule 9 of the Code of Civil Procedure and in the said application plaintiffs prayed for local investigation commission in order to ascertain the

actual measurement of the 'A' Schedule property to the plaintiff and to ascertain whether any structure has been raised by defendants on plaintiff's land described in 'B' schedule to the plaintiff.

Learned Court below after hearing both the parties was pleased to allow the local investigation commission with the observation, since the suit pertains to allegation of encroachment by the defendants and also for mandatory injunction to remove structure, if any, over the 'B' Schedule property, so for proper elucidation of real controversy between the parties local investigation commission is needed.

Mr. Anirban Das, learned Counsel appearing on behalf of the petitioners submits that there is no description in the plaint as to which portion has allegedly been encroached by the defendant Nos. 2 and 3. In the absence of any such description, there is no necessity for appointment of any commissioner for holding local investigation commission. This is also because schedule of the plaint is vague and indefinite. For adjudication of suit local investigation commission is not necessary. Accordingly, he has prayed for setting aside the order impugned.

I have considered the submissions made by both

the parties.

On perusal of the contents of the plaint, it appears that the plaintiffs main allegation in the plaint is that on 22.12.2016, the defendants illegally took forcible possession over the 'B' schedule suit property. Plaintiffs requested the defendants to vacate the 'B' Schedule suit property immediately in their favour but the defendants refused to vacate the 'B' Schedule property and forcibly made construction over the 'B' Schedule property.

However, on perusal of 'A' and 'B' Schedule property it appears that 'B' Schedule property is replica or reprint of the 'A' Schedule property and there is no description as to which portion of the suit property has been allegedly encroached by the said defendants. Without considering the said aspect and without looking into the Schedule of the plaint as well as the Schedule in connection with the local investigation commission, petition the Court below had allowed the local investigation commission to ascertain encroachment, if any, over 'B' schedule property, when 'B' schedule property is vague and indefinite. Accordingly, the order impugned is not sustainable in the eye of law.

In such view of the matter, C.O. 3138 of 2018 is

allowed. The order impugned No. 29 dated 10th August, 2018 is hereby set aside.

However, this order will not preclude the plaintiffs/opposite parties to make application for amendment of the of plaint, if any.

In the event of filing such application for amendment of plaint by the plaintiffs/petitioners the Court below will dispose of the same in accordance with law, on merit, without being influenced by any observations made hereinabove.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)