

Ct.
No.
652

8
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11.07
2023

C.O. 3413 of 2018

Jiten Das & Ors.

-Versus-

Ram Ranjan Banerjee
Memorial School & Ors.

Mr. Biswarup Biswas
Mr. G.C. Samanta

...For the Petitioner

Mr. Sourav Guchhait

...For the Opposite Parties

This revisional application under Article 227 of the Constitution of India has been assailed against the order No. 35 dated 21st August, 2018 passed by the learned Civil Judge (Junior Division), Additional Court at Krishnagar, Nadia in Title Suit No. 32 of 2017.

The defendants/petitioners state that the plaintiff/opposite parties herein filed the aforesaid suit for permanent injunction against the present defendants/petitioners in respect of the suit property to the plaintiff. The defendants/petitioners in their written statement cum counter claim have prayed inter alia for a declaration of the defendants' title in the suit property and for eviction of plaintiff Nos. 2 to 8 from the schedule property mentioned counter claim and for khas possession in favour of defendants in respect of 12 decimal of land out of 30 decimal in suit plot.

Defendants/petitioners' specific case in their counter-claim is that they have purchased 12 decimal of suit plot with definite demarcation having old structure thereon along with 09 decimal non-suit plot from original owner Satadal Mukhopadhyay by registered deed dated 10.01.2017 and thereafter purchased 06 decimal from suit plot by another registered deed dated 16.02.2017 with definite demarcation. Their further case is they had requested

plaintiff no. 2 to 8 to vacate said purchased land measuring 12 decimal but said plaintiff requested them to grant some more time to vacate but ultimately, they refused to vacate for which defendants filed the suit in the nature of counter claim.

Plaintiff No.1 on the other hand contended that plaintiff no.1 is a primary school and plaintiff no. 2 to 8 are teachers. On 18.01.2017 the defendants tried to take forcible possession of suit property and with the intervention of police they were resisted. According to plaintiff, defendants are trying to grab the school property for promoting business and are trying to sell the property where the school situates and for which plaintiffs prayed for permanent injunction against the defendants.

It is not in dispute that L.R. suit plot No. 3483 is measuring 30 decimal. Defendants, contended their purchased 12 decimal is comprising of one storied structure which is butted and bounded as per schedule of counter claim. Defendants/petitioners further contention is the plaintiffs/opposite parties are in possession of 12 decimals of land in the suit plot. Now the plaintiffs/opposite parties are trying to grab the remaining 18 decimals of the land in the suit property taking a plea that they have no playground in the said School.

During pendency of the said suit the defendants/petitioners filed an application seeking local investigation commission under Order XXVI Rule 9 of the Code of Civil Procedure and the plaintiffs/opposite parties filed written objection against the said application. In the petition for local investigation commission defendants/petitioners contended that plaintiffs/opposite parties in their written statement against counter-claim stated that defendants claim that

schedule of counter claim measuring 12 decimal is butted and bounded is vague, imaginary and incorrect. Accordingly to elucidate real controversy over allegedly butted and bounded land measuring 12 decimal of land in suit plot, local investigation is absolutely necessary. Such local investigation is also required to elucidate whether plaintiffs/School building covering 30 decimal of land as claimed by plaintiff or plaintiff/school situates covering only 12 decimal of land. Learned court below rejected the defendants' aforesaid petition for local investigation commission by the impugned order holding that the Advocate Commissioner cannot be appointed for collection of evidence

In this context learned Counsel for the petitioners relied upon some decisions of this Hon'ble Court in the cases of *Duncun International (India) Ltd. Vs. Anglo India Jute Mills Co. Ltd. & Ors.* (C.O. 3641 of 2018) dated December 13, 2022; *Rina Mallick Vs. ashim Kumar Ganguly @ Gangopadhyay & Ors.* (C.O. 2120 of 2019) dated June 07, 2023; *Jalaram Timber Co. Vs. Sri Mahananda Das & Ors.* (C.O. 1231 of 2018 dated March 11, 2020; *Sri Asim Kumar Pal Vs. Smt. Urmila Sarkar & Ors.* (C.O. 507 of 2018) dated September 03, 2018 and *Narayan Chandra Datta @ Narayan Datta Vs. Aruna Dutta & Ors.* (C.O. 2664 of 2022) dated January 06, 2023, in support of his contention that where there is controversy about identification, location on measurement of land, local investigation should be done.

Learned Counsel appearing on behalf of the opposite parties raised strong objection contending that the then Zamindar granted the said land to the School for construction of the School building and as such there is no necessity to make local investigation commission to

ascertain the extent of possession of the parties which will amount to fishing of evidence and not elucidating any matter in dispute. Accordingly, he prayed for dismissal of the application.

I have gone through the order impugned and it appears that the Court below rejected the said application with the observation that real dispute between the parties is according to plaintiffs they are in possession of entire 30 decimal of land in suit plot, while defendants' contention is plaintiffs are in possession of 12 decimal only and in such circumstances if prayer for local investigation is allowed that would amount to collection of evidence about possession of the parties.

In this context learned court below has overlooked the fact that this is not a simpliciter plaintiffs suit for permanent injunction in respect of entire 30 decimal of land in suit plot but it is also defendants suit claiming title by purchase with specific plea that his purchased 12 decimal of land occupied by opposite parties herein are butted and bounded as per schedule mentioned in counterclaim and his purchased 06 decimal of land by another deed in suit plot is also with definite demarcation and opposite parties are trying to grab rest portion of land. Now to elucidate conclusively and effectively as to whether defendants' purchased lands are demarcated definitely or not in terms of their purchase deeds as claimed by the defendants, local investigation commission will help the court to come to a reasonable conclusion. Though petitioners in local investigation commission has petition sought for report as to whether plaintiff/school is possessing the entire 30 decimal of land or plaintiff school situates on 12 decimal of land but learned court below ought to have allowed the said application not to

ascertain possession but to ascertain whether defendant's purchase lands are butted and bounded as per schedule of counterclaim in terms of their deeds since defendant/petitioners specific case in terms of their deeds is that plaintiffs are also trying to encroach defendants remaining purchased land which he purchased with specific demarcation and with specific measurement.

In such view of the matter the order impugned, being order No. 35 dated 21st August, 2018 passed in Title Suit No. 32 of 2017 passed by the learned Civil Judge (Junior Division), Additional Court at Krishnagar, Nadia is hereby set aside.

Learned Court below is directed to appoint a local investigation commissioner and to ask the commissioner to submit a report elucidating the question as to whether defendants' purchase lands are butted and bounded as per schedule of counter claim and to identify, locate and measure defendants' purchased portion in the suit plot on relaying defendants purchase deeds, so that real dispute between the parties can be adjudicated effectively and conclusively.

Learned Court below is further directed to appoint a competent person having knowledge in survey work to conduct the commission work as above and court below will also determine the initial commissioners fee which will be directed to be paid by the petitioners/defendants. He will further direct appointed commissioner to conclude the investigation commission and to submit a report before the learned Court below within a period of 12 weeks from the date of his appointment.

The revisional application, being C.O. 3413 of

2018 is thus disposed of.

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.)