

23.03.2023
SL No.84
Court No. 654
Ali

**IN THE HIGH COURT AT CALUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 2851 of 2022

Sunil Mondal

versus

Haradhan Mondal

Mr. Sukanta Chakraborty

Mr. J.P. Chatterjee

.....for the petitioner.

This revisional application has been filed by the petitioner-defendant under Article 227 of the Constitution of India challenging Order No. 19 dated 12th July, 2022 passed in Title Suit No. 53 of 2020 by learned Civil Judge (Junior Division), 3rd Court, at Asansol.

The brief fact of the case is that the plaintiff-opposite party filed a suit for declaration with consequential relief for permanent injunction being Title Suit No.53 of 2020. It is contended, inter alia, by the plaintiff-opposite party that a strip of vacant land situated on the southern portion of plaintiff's residential house measuring 13 fts in breath and 45 fts in length being a part and parcel of 'A' schedule property and the petitioner-defendant is trying to encroach upon such strip of land in the said suit by fixing iron gate. The plaintiff filed an application under Order XXXIX, Rule 1 and 2 read with Section 151 of the Code of Civil Procedure. The plaintiff

opposite party also filed an application under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure for holding investigation commission. Upon hearing the learned trial court allowed such application. Hence this revision.

Mr. Sukanta Chakraborty, learned advocate for the defendant-petitioner at the outset, indicates that there is anomaly, so far as schedule 'B' is concerned. The defendant-petitioner is the owner of the property comprised within L/R plot No. 1999/3775 corresponding to L/R Khatian No. 2446 under Mouza Jamuria. However 'B' schedule property in the plaint the L/R plot has been mentioned as 1999/3776. He further submits that since the schedule 'B' to the plaint is incorrect, the commission so granted by the trial court to be undertaken would result in a futile exercise and, therefore the impugned order needs to be set aside.

At the outset, upon perusal of the plaint it appears that the 'B' schedule has been mentioned as *"All that piece and parcel land with building situated within Mouza Januria L/R plot No. 1999/3776 corresponding to L/R Khatian No. 2446 measuring 0.03 Acres P.O. & P.S. Jamuria Dist.-Paschim Bardhaman"*. The defendant in his written statement at paragraph No. 10 has categorically stated that plot No. 1999/3775 belongs to the defendant and his three brothers.

On going through the impugned order it is found that the learned trial court has taken into account that since the plaintiff has not stated that the defendant has encroached any portion of land rather the defendant tried to encroach upon, has modified the points to be inspected by the Survey Commissioner, namely, (1) *To relay and measure the A and B schedule property after relaying the same with the title deeds of the plaintiff and defendants,* (2) *to investigate whether C schedule property is part of A schedule property or not,* (3) *to note any other feature* . Mr. Chakraborty, learned advocate has indicated that in the application under Order XXVI Rule 9 the Schedule 'B' has been correctly spelt out. Upon relaying the schedule mentioned in the plaint and the application under Order XXVI Rule 9 I find substance in the submission of Mr. Chakraborty there is discrepancy in specifying Schedule "B" in the plaint. Be that as it may, the report of the Survey commissioner as directed by the trial court will aid in clarifying any anomaly/discrepancy as indicated by Mr. Chakraborty. Thus I find no reason to interfere with the impugned order passed by learned trial court.

Defendant-petitioner is given liberty to agitate all points after submission of the report by the Commissioner.

With the aforesaid observations, the revisional application being **C.O 2851 of 2022** stands disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stand disposed of.

Urgent photostat copy of the order, if applied for, be given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)