

S/L 7
27.4.2023
Court No.652
SD

CO 3475 of 2018
With
CAN 1 of 2022

Sk. Badiyal Rahaman & Ors.
Vs.
Sri Ashok Kumar Bed & Ors.

Mr. Supratim Dhar
Mr. Dhananjay Nayak

...for the Petitioners.

Mr. Sourav Sen
Mr. Partha Chakraborty
Ms. A. Chakraborty
Ms. Susmita Chakraborty
Mrs. Jayshree Saha
Mr. Muhammad Obaid

...for the Opposite Parties.

Being aggrieved and dissatisfied with the Order No.61 dated 11.9.2018 passed by the learned Civil Judge (Junior Division), 1st Court, Tamruk in Title Suit No.80 of 2013, present revisional application has been preferred.

By the impugned order, learned court below was pleased to allow plaintiffs/opposite parties' application for local investigation commission under Order XXVI Rule 9 of the Code of Civil Procedure.

The petitioners contended that the opposite parties herein as plaintiffs instituted aforesaid Title Suit No.80 of 2013 seeking declaration that the defendants/petitioners herein are the trespassers over the opposite parties/plaintiffs' land and they have also sought for eviction of the petitioners/defendants from the said land and also for permanent injunction.

The petitioners submit that the opposite parties/plaintiffs herein moved an application for injunction before the court below along with an application for local inspection commission under Order XXXIX Rule 7 of the Code. Said prayer for inspection was allowed and in terms of the order of the court below, local inspection commission was held in respect of the suit property and the learned commissioner has submitted his report.

On 27.6.2018 the opposite parties/plaintiffs filed an application for local investigation commission in respect of selfsame property under Order XXVI Rule 9 of the Code and the petitioners herein as defendants filed their written objection against the said application. On 11.9.2018 the said application was taken up for hearing and learned court below was pleased to allow the said application with the observation that to elucidate the matter in dispute, local investigation commission is necessary as per points mentioned in the schedule of investigation commission petition.

Learned counsel appearing on behalf of the petitioners submits that the learned court below has acted illegally with material irregularity by allowing the said application. Learned court below had not taken into consideration that local inspection commission has already been conducted in respect of the suit property and as such, there is no necessity for conducting further local investigation commission in respect of the selfsame property. Court below also erred in holding that for the

purpose of elucidating the real controversy between the parties, local investigation commission is necessary. Accordingly, he has prayed for setting aside the order impugned.

In this context, he relied upon a judgment of this court in ***Santosh Kr. Saha vs. Gita Paul & Ors.*** reported in ***2001 WBLR (Cal) 729***.

Learned counsel appearing on behalf of the opposite parties submits that the plaintiffs have specifically averred in their plaint that the defendants have encroached a portion of their land which is marked as 'Ka' schedule to the plaint. Now, in order to ascertain, the truthfulness of allegation and to elucidate the extent of area of 'Ka' schedule property, local investigation commission is badly needed and as such, the court below has not committed any wrong in allowing the said application in order to adjudicate the real controversy between the parties. Unless suit property is investigated by a survey knowing commissioner, it would not be proved or disproved the dispute about encroachment.

In this context, he relied upon a judgment of Apex Court in the case of ***Haryana Waqf Board vs. Shanti Sarup and Ors.*** reported in ***(2008)8 SCC 671***.

Considered the submissions made by both the parties.

On perusal of the plaint, it appears that the plaintiffs' specific case is that on 14.02.2012 they have purchased 'Kha' schedule suit property to the plaint measuring about 59½ decimal by a registered deed of purchase being No.433 and it is also their specific case that out of that 'Kha' schedule, a

portion of land measuring 3 decimal along with two rooms and varanda standing therein, which has been mentioned in the 'Ka' schedule to the plaint, has been encroached by the petitioners herein, wherefrom plaintiffs have also sought for petitioners/defendants' eviction. Accordingly, the real controversy between the parties in the present suit is whether the defendants/petitioners have encroached 'Ka' schedule property to the plaint or not and whether 'Ka' schedule property is part of plaintiffs' purchased 'Kha' schedule property or not. In order to adjudicate said controversy between the parties, in the said suit, local investigation commission is needed. In fact the expression "local investigation" is wide enough to include localisation with reference to the documents of title.

The nature of the dispute is such that unless actual measurement of the property in question comes before the court, it would not be possible for the court below to adjudicate controversy effectively and conclusively. The court which is adjudicating on an issue before it, is the best judge to decide the need or necessary to appoint a commissioner.

The case law referred by the petitioners reported in 2001 WBLR (Cal) 729, the question for determination in the said suit was whether there was any such obstruction on the disputed land or not. Accordingly, it relates to a local feature which can very well be ascertained by way of local inspection commission but the question of alleged encroachment can never be ascertained from local inspection commissioner's

report. In fact, paragraph 4 of the said judgment makes the position clear which states, *“In local inspection only the existing condition of the suit property is to be found and reported but in local investigation elucidation is required for the purpose of enabling the court to settle a dispute over a particular portion of the suit property and for that purpose sometimes measurement and relayment etc. may be necessary. In case of local inspection the report does not ipso facto become a part of the record and it has got to be proved by means of evidence and if it is made an exhibit being admitted into evidence then and then only it can be relied upon. But in case of local investigation the position is quite different. The report of the local investigation Commissioner becomes a part of the record and unless and until it is discarded by the Court on the basis of materials on record it continues to remain so.”*

In view of above, learned court below has not committed any mistake in allowing the said application for local investigation commission and I find no merit in the present application.

Accordingly, CO 3475 of 2018 is dismissed.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)