

Item No.5
12.09.2023
Court. No. 19
GB

C.O. 2901 of 2022

Asim Kumar Chattaraj
Vs.
Debasis Das Bairagya & Ors.

Ms. Rupoma Bhattacharjee

...for the Petitioner.

This revisional application arises out of an order dated July 4, 2022 passed in Title Suit No.110 of 2018 by the learned Civil Judge (Junior Division), 1st Court at Katwa. The plaintiff in the suit, is the petitioner.

By the order impugned, the learned court below rejected an application for local investigation filed by the petitioner under Order 26 Rule 9 of the Code of Civil Procedure. The learned court found that the plaint did not disclose that there was any anomaly with regard to the identification of the schedule of the property, and as such, local investigation would not be necessary at all.

According to the learned court, the plaintiff claimed right, title, interest and possession in respect of the suit property. It was for the plaintiff to establish title. The court rejected the application on the ground that local investigation was not required to elucidate the matter in dispute.

The learned counsel for the plaintiff submits that if local investigation is held, the same would not cause any prejudice to the defendant no.1 in the suit. The learned advocate further submits that in the written statement the defendant no.1 categorically stated that he was the owner,

having exclusive right, title and interest in respect of 5.8 decimals of land in L.R. Dag No.1194 whereas the specific case of the plaintiff was that the plaintiff was the exclusive owner of the said property in the same dag. Hence, a local investigation would elucidate the rights of the parties in respect of the property in question.

This Court has perused the plaint. The plaint case is that the plaintiff had purchased the suit property from one Thakurdas Pal, by a registered deed of sale with specific demarcated boundary. The plaintiff was possessing the property on and from 2003, but the name of the defendant no.1 was entered in the L.R. records in respect of the said property. Although, the R.S. records stood in the name of the vendor of the plaintiff, the L.R. records were mistakenly prepared. It has been alleged that the government authorities have erroneously recorded the name of the defendant no.1 in respect of the property in question, although the plaintiff purchased the property by a registered deed of conveyance. Prayer has been made for declaration and permanent injunction.

In the written statement the defendant no.1 has claimed exclusive right, title and interest over the self-same property.

None of the parties have raised any boundary dispute. There are no allegations of encroachment or dispossession. No prayer for recovery of any portion of the suit property has been made.

Under such circumstances, this Court is of the view that the plaintiff would have to prove his right, title and interest on the basis of the title deed and other evidence. Similarly, the defendants would have to discharge their onus as per law.

Under such circumstances, there being no dispute with regard to the identity of the land in question or over the demarcation and boundary of the land, the application for local investigation was rightly rejected.

Accordingly, the revisional application is dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)