

27.06.2023
Item No. 77
Court No.652.
S. De

C.O. No. 3607 of 2019
I.A. No. CAN/1/2023

Anku Konai & Ors.
Vs.
Chandu Konai & Ors.

Mr. Prasenjit Mukherjee,
Mr. Saptarshi Chakraborty,
Ms. Paulomi Dutta,
...for the petitioners.
Mr. Santanu Kr. Mitra,
...for the State.
Mr. Sujit Sankar Koley,
Mr. Swagatam Deb,
...for the WBSEDCL.

Challenging the impugned order dated 08.07.2019 passed by learned Civil Judge (Jr. Division) 2nd Court, Rampurhat, Birbhum in connection with Title Suit No. 181 of 2014, present application, under Section 227 of the Constitution of India, has been preferred. By the impugned order, learned Court below has been pleased to reject plaintiff's application under Order XXVI Rule 9 of the Code of Civil Procedure.

The petitioners contended that petitioners/plaintiffs filed the aforesaid suit inter alia for permanent injunction against defendants No. 1 to 3 restraining them from entering into 'Ka' schedule property and from using plaintiff's land as pathway of electric transmission line by erecting transmission tower without consent of the plaintiffs. The

petitioners claimed that they are the owners of the 'Ka' and "Kha" scheduled property to the plaintiff and defendant nos.1 to 3 have no right, title or interest in the "Kha" scheduled property. There is a road in the northern side of "Kha" scheduled property and without having any right, defendants are trying to create a route over plaintiff's land for their electric transmission line by erecting electric pole by the side of the road over the scheduled property, encroaching plaintiffs' land.

During pendency of the suit, plaintiff filed an application under Order XXVI Rule 9 of the Code seeking local investigation commission to ascertain whether there is any alternate road in the eastern side of the schedule property owned by the plaintiffs and also to show that this is the only pathway of the parties through south to north and to investigate whether there is any residential house in the 'Ka' and 'Kha' schedule property. Learned Court below by the order impugned was pleased to reject the same on the ground that there is no allegation for encroachment of land in the present case and also on the ground that no boundary dispute has been raised in the present suit.

Being aggrieved by the said order, learned counsel appearing on behalf of the petitioners submits that the Court below has failed to appreciate that the

prayer for local investigation commission is required for the purpose of elucidating the matter in dispute. In fact, the defendants are trying to take overhead electric transmission line over the land of the plaintiff by erecting electric pole on the “Ka” and ‘Kha’ scheduled property and unless such prayer for local investigation commission is allowed the plaintiff will not be able to justify his prayer for injunction.

In reply, learned counsel appearing on behalf of the respondent nos. 6 and 7/WBSEDCL submits that they have no intention to encroach plaintiff’s land for the purpose of carrying out work of overhead electric transmission line against plaintiffs’ will nor they have any intention to erect electric pole over the “Ka” or “Kha” scheduled property forcibly. However, if any such dispute arises between the parties regarding erection of electric pole or overhead transmission line, the Rule is very specific and in that case the parties may approach before the District Magistrate under Rule 3 of Works of Licensees Rules, 2006.

After going through the contents of plaint it appears that for the adjudication of the suit in terms of plaintiff’s prayer, local investigation commission is uncalled for as in the suit, permanent injunction is sought for restraining defendant no 1 to 3 from entering and from carrying out any work for installation of electric transmission wire over ‘Ka’

schedule property. Rule 3 of Works of Licenses Rules, 2006 provides that where the owner or occupier of the building or land raises objection in respect of works to be carried out, the licensee i.e. defendant no 6 & 7 (WESEDCL) shall have to obtain permission in writing from the authority, authorized by State Government in this behalf, for carrying out the work. Accordingly if plaintiffs have any grievance in carrying out electric transmission works over his land against licensee, he has his right to raise objection under the Rule of 2006 and the authorized person before granting permission will have to settle the issue and as such local investigation commission is not at all required to adjudicate such objection/controversy.

Having considered the facts and circumstances of the case and the nature of dispute involved in the suit this court is of the view that the Court below has committed no mistake in considering the material issue in its proper perspective nor it has misdirected itself while adjudicating the issue and as such the order impugned does not call for interference.

In view of above, C.O. No. 3607 of 2019 along with the application being I.A. No. CAN/1/2023 are dismissed.

However, this order will not preclude the parties to approach before the Appropriate Authority under

Rule 3 of Works of License Rules, 2006, if situation demands.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Ajoy Kumar Mukherjee, J.)