

11.10.2023
Court No. 19
Item no.21
CP

C.O. No. 3319 of 2023

Sri Ajoy Maity & ors.

Vs.

Sri Bablu Maity & ors.

Mr. Amit Baran Dash

Ms. Ankana Sarkar

.....for the petitioners.

The petitioners are the plaintiffs in Title Suit No. 205 of 2013 which is pending before the learned Civil Judge (Junior Division), 1st Court, Contai. By the order impugned, the learned court below rejected an application for local inspection. According to the learned court below, the suit property measured 16 decimals which was on the western part of the Plot No. 3177. The properties were being enjoyed by the parties on the basis of a partition decree passed in a prior partition suit. The partition suit culminated in a commission. On the report of the partition commissioner, the shares were allotted.

Thus, the court was of the view that investigation by a survey passed commissioner was not necessary in a suit for declaration and injunction. The issues involved in the suit would be decided on evidence.

Mr. Dash, learned advocate for the plaintiffs/petitioners, submits that the learned court

below wrongly relied upon a hundred year old partition decree while rejecting the application for local investigation. It is further contended that unless there is a clear demarcation by way of a local investigation in respect of the shares of the respective parties, the dispute will continuously crop up with regard to the extent of land parties were enjoying and may enjoy in future. Under such circumstances, a measurement by way of a relay should be allowed to be conducted by a survey passed commissioner.

Having considered the plaint, it appears that the plaintiffs have accepted the fact that they were enjoying the property on the basis of a partition. The fact that proportionate areas in Plot No. 3177 was enjoyed by the respective parties as allotted to them by the partition commissioner at the time of passing of the final decree in Title Suit No. 113 of 1924, is admitted in the plaint.

The further plaint case is that despite having a specific allotted share in the suit property, the defendants were trying to grab the property from the plaintiffs. They also threatened to dispossess the plaintiffs. Such illegal activities of the defendants compelled the plaintiffs to file the suit. The plaintiffs prayed for a declaration that the 'Ka' schedule property measuring about 6 decimals out of 49 decimals in the western part of Dag No. 3177, was

the exclusive property of the plaintiffs. Further decree for a permanent injunction restraining the defendants from disturbing the peaceful possession of the plaintiffs with regard to the 'Ka' schedule property, was also prayed for.

The allegation in the plaint is the attempt of the defendants to forcefully take over possession of the 'Ka' schedule property. No boundary dispute has been raised. There are no allegations of encroachment. Thus, the question of local investigation would not arise. The plaintiffs would have to prove their right, title and interest in respect of the 'Ka' schedule property and the alleged illegal attempts of the defendants to forcefully evict the plaintiffs from the 'Ka' schedule property. These can be proved by leading evidence. There is no dispute which requires further elucidation.

The revisional application is, thus, disposed of.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)