

D/L
Item No. 63
13.01.2023
KOLE

CO 4111 of 2018

Samir Chandra Dey & Anr.
-Vs.-
M/S. Modi Proteins Pvt. Ltd.

Mr. Ashish Chandra Bagchi,
Mr. M. Patra,

...for the petitioners

Mr. Kaustav Chandra Das,
Mr. Aditi Dutta,

...for the opposite party.

Being aggrieved and dissatisfied with Order no. 9 dated October 10, 2018 passed by the Learned Civil Judge (Senior Division), Chandannagore, Hooghly in Title Suit No. 114 of 2018, present application has been preferred. By the impugned order, the learned Court below has been pleased to reject the plaintiffs' prayer for local inspection commission on the ground that it would be difficult for the learned local inspection commissioner to identify the suit property which is comprising of different Plot numbers mentioned in Schedule A, B and C to the plaint.

Petitioners' case is petitioners are the absolute owners of the "A" & "B" schedule properties to the plaint. The property which has been purchased by the opposite party's company from plot no. 662 described in schedule "C" to the plaint. The petitioner filed the aforesaid suit for declaration and injunction alternatively for partition. The petitioner contended that the petitioner particularly purchased "A" Schedule property to reach LR plot nos. 698 and 699 because except A Schedule property the petitioners have no way to reach his LR Plot Nos. 698 and 699 and other plots

situated in the western site. The opposite party presently trying to grab A and B Schedule property by raising wall after removing the fencing from A and B Schedule property and also adjacent to B Schedule property with an intention to grab the petitioners' other property. The petitioners further submit that "A" and "B" Schedule property i.e. LR plot No. 698 and 699 are very important property of the petitioner and the opposite party having full knowledge that if the opposite party able to surround A and B Schedule property then the petitioner will be forced to give up all other plots, particularly LR plot No. 698 and 699 and will be forced to sell the same to the opposite party. Further case of petitioners is that opposite party is going to raise boundary wall surrounding entire Plot No. 662 and 668 but the opposite party has no right title in respect of entire Plot No. 662 because petitioner purchased three decimal of land from southern side of Plot No. 662 in a demarcated way and have been possessing the same. As opposite party was going to raise boundary wall covering the entire plot no. 662 disobeying the previous demarcated line and trying to surround plot no. 698 as mentioned in B Schedule, the petitioners filed the suit and prayed for injunction contending if the court consider that Plot No. 662 not yet partitioned then the petitioners alternatively pray for partition and the learned Court below after hearing was pleased to pass order of status quo in respect of the suit property.

But in spite of such order, the opposite parties have flaunted and scuttled by raising wall upon A and B Schedule

property and trying to change the nature and character of the suit property. In order to show that the defendant violating the order of status quo are trying to raise wall over A and B Schedule property and thereby trying to change the nature and character of the property and has also collected building materials for further construction, he prayed for local inspection commission. But the learned Trial Court by the impugned order was pleased to reject the same.

Mr. Bagchi, learned Counsel appearing for the petitioners, submits that the court below has erred in rejecting the said application without considering the fact that the opposite party has erected pillar over A and B Schedule property and that the opposite party has flouted the order of the Court and to prove the same, topography of the suit property is required to be brought before the Court by way of local inspection commission.

Mr. Das, learned Counsel appearing for the opposite party, raise vehement objection and contended that the local inspection commission is not at all required for adjudication of the present dispute. The petitioners have filed this petition for local inspection commission to collect evidence for the suit which is not permissible and moreover the plaintiff has not filed any application under Order XXXIX Rule 2A, alleging that the defendant opposite party has violated the order of injunction. Accordingly, this application for local inspection is not at all required to be allowed at this stage and the Trial Court rightly rejected the petitioners' prayer for local inspection commission, which does not call for interference by this Court.

I have considered the submissions made by both the parties. On perusal of the petitioners' application under Order 39 Rule 7 CPC, it appears that the plaintiffs/petitioners have specifically alleged that after passing the order of status quo the defendants are trying to erect pillar covering A and B Schedule property and thereby trying to change the nature and character of the property and for this purpose, he has collected building materials and such topography of the suit property is required to be brought before the Court by way of local inspection commission.

On perusal of the impugned order passed by the Learned Trial Court it appears that the reason for rejection of the local inspection commission is that the Schedule property in respect of which local inspection commission has been sought for, comprising of A, B and C Schedule which would be difficult for the local inspection commissioner to identify and the whole exercise to bring a clear picture before the court would be a futile exercise.

Usually in the case of local inspection commission the properties are identified by the parties in the presence of commissioner. Even if any dispute arises regarding identification of the property the commissioner has to report before the learned Trial Court, that it becomes difficult for the commissioner to identify Schedule mentioned property and as such I am of the view that the Trial Court was not justified in rejecting the plaintiffs' prayer for local inspection commission, assuming that it would be difficult for the Commissioner to identify the schedule mentioned property

when court below has passed an order of status quo, then in order to ascertain status of the property, if the topography of the property comes before the court by way of local inspection commission, neither party will have a cause to prejudice and this has got no connection whether plaintiff/petitioner has filed any application under Order XXXIX, Rule 2A CPC or not.

In view of the above, CO 4111 of 2018 is allowed. The order impugned dated 10.10.2018 passed in Title Suit No. 114 of 2018 by the Learned Civil Judge (Senior Division), Chandannagore, Hooghly is hereby set aside. The Learned Court below is directed to appoint a local inspection commissioner within four weeks from the date of communication of this order to make local inspection commission in terms of the points mentioned in the schedule of local inspection commission petition at the cost of plaintiffs/petitioners and the Learned Commissioner will submit a report within eight weeks from the date of appointment. The name of the Commissioner and the fees of the Commissioner will be decided by the Learned Court below accordingly.

However this court has not gone into the merits of the case and the order is confined to the issue of local inspection commission only.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Ajoy Kumar Mukherjee, J.)