

Item No. 3
12.10.2023
Court. No. 19
GB

C.O. 3577 of 2022

Sri Chandan Biswas & Anr.
Vs.
Bidyut Parna Ghosh (Biswas) & Ors.

Mr. Samrat Das

...for the Petitioners.

The revisional application arises out of an order dated August 31, 2022 passed in Title Suit No.32 of 2016. By the order impugned, the learned Civil Judge (Junior Division), 2nd Court at Basirhat rejected an application for local inspection. Such application was filed when the cross-examination of P.W.1 was going on.

According to the learned court, the plaintiffs were the dominus litis and it was for the plaintiffs to prove their right, title and interest in respect of the suit property. The defendants had a rival claim in respect of the suit property and in their written statement it had been categorically stated that the defendants had the right, title, interest and possession of the suit property and they were residing in the suit property since long. They had also made substantial construction on the same.

According to the learned court, the real picture of the property was not necessary to be brought on record as both parties had rival claims to the suit property, on the basis of their individual records. The onus was on the plaintiffs to prove the plaint case. Thus, allowing any local inspection at the behest of the defendants, in my opinion, would amount

to fishing out evidence. The question of who was in possession, how the party in possession was enjoying the property, are all matters of trial.

The decision of the Kerala High Court, cited by Mr. Das, learned advocate for the petitioners in the matter of ***John versus Kamarunnissa*** reported in ***AIR 1989 Ker 78***, does not aid the petitioners as the judgment is on the issue of local investigation under Order 26 Rule 9 of the Code of Civil Procedure. Unless there is a boundary dispute and demarcation is necessary, local investigation is usually not granted. The petitioners on the other hand prayed for local inspection under Order 39 Rule 7 of the Code of Civil Procedure.

The decision of the Madras High Court in the matter of ***Subbae Gounder versus Palanathal*** reported in ***AIR 1969 Mad 204*** also does not help the petitioners as, the facts are distinguishable. Rather, in the said case the Madras High Court held that the court did not have any jurisdiction to issue a commission on matters which were beyond the subject matter of the suit.

Under such circumstances, this Court does not find any reason to interfere with the order impugned. The order impugned is upheld. The plaintiffs will have to prove their right, title and interest in respect of the suit property and if the plaintiffs discharge such onus, the defendants would have to establish their own case and the issues raised by both the parties shall be decided on the basis of the oral and documentary evidence.

Accordingly, the revisional application is disposed of.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)