

22.06.2023

ct. no. 236

sl. No.9

sn

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 3415 of 2014

**Sk. Soharab Ali
versus
Abdul Rahim & Anr.**

Mr. Suprabhat Bhattacharyya
Mr. Mrinal Kanti Biswas
Mr. Manish Bisws
... for the petitioner
Mr. Gopal Chandra Ghosh
..for the opposite parties

Heard Mr. Suprabhat Bhattacharyya, learned advocate for the petitioner.

This revisional application challenges the order no.216 dated 6th August, 2014 passed in Title Suit no. 3 of 2008.

Mr. Bhattacharyya, learned advocate for the petitioner in support of his contention relied upon a decision of the Hon'ble Supreme Court pronounced in the case of ***Subhaga & Ors. Vs. Shobha & Ors. reported in (2006) 5 SCC 466.***

It is contended that the plaintiff/petitioner filed the suit seeking declaration of the title over the suit property acquired by way of adverse possession. The defendant of the suit also filed another suit for recovery of the possession. Both the suits are being tried analogously by the learned Trial Court. The plaintiff/petitioner filed an

application for local inspection and the prayer was allowed.

In course of evidence, the learned Advocate Commissioner, Sukanta Halder as PW-6 stated that he had no expertise to survey property. He mentioned in the report about the existence of several houses surrounding the suit plot but he had no knowledge as to whether those houses are situated on the suit plot. This answer inspired the plaintiff to file an application under Order 26 Rule 9 of the Code of Civil Procedure.

I have the occasion to go through Annexure P-4, the application under Order 26 Rule 9 of the Code of Civil Procedure.

Points of investigation on Commission

1. To survey and relay to (ka) schedule land to the plaint with settlement mouza map and assertion whether there are three pakka buildings along with more than 40 rooms schedule or not? And whether there is pond with pahar along with the so many kinds of timber bearing trees and fruit bearing trees or not?

2. To draw a map to the schedule showing the aforesaid property with the present possession of the said plot.

3. "Whether there is existence of human dwelling into the said room and so many kinds of shops existing or not."

In a suit for declaration of title in respect of the suit property, in my humble opinion, it is not at all essential for the Ld. Trial Court to consider those points to adjudicate the suit. It seems to be a ploy to delay the disposal of the litigation.

The issue involved in the Case Subhaga(supra) was demarcation of the suit plot, where local investigation is essential.

This revisional application does not merit any consideration and the same stands dismissed.

The learned Trial Court is requested to take necessary steps as far as practicable to protect the constitutional rights of the litigants to have speedy trial.

A copy of the order be sent down to the learned Trial Court immediately.

All parties are directed to act upon server copy of this order.

(Siddhartha Roy Chowdhury, J.)