

AD-06
Ct No.01
Jalpaiguri
07.02.2023
TN

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CO 87 of 2022

Tikendra Nath Roy
Vs.
Sri Santosh Roy

Mr. Bhaskar Roy Mahashaya

.....for the petitioner

Mr. Debasish Mukhopadhyay,
Mr. Bikramaditya Ghosh,
Ms. Supriya Singh,
Mr. Anirban Banerjee

....for the opposite party

Learned counsel for the petitioner contends that despite a previous *status quo* order having been passed by the trial court without ascertaining the exact possession of the parties, subsequently, on an application made by the plaintiff/opposite party, the trial court, by the impugned order, granted liberty to the opposite party to pluck tea leaves and prune tea plants. It is submitted that subsequently an appeal was preferred against the same by the petitioner, which has been dismissed, thereby affirming the order of the trial court.

It is contended that the plaintiff/opposite party has admitted in his plaint that the plaintiff is merely in

occupation of a part of the suit plot, described in Schedule-B, and that the records of rights indicate that the 12 decimals of land encroached by the opposite party is also standing in the name of the present petitioner.

That apart, it is argued that a counter-claim has been filed along with the written statement by the petitioner, seeking recovery of possession. Learned counsel also points out to the allegations made in the pleadings of the parties to the effect that the opposite party is attempting to cut down *Sal* trees standing over the suit land.

Learned counsel for the plaintiff/opposite party submits that there are allegations and counter-allegations regarding the *Sal* trees. That apart, in the schedule of the counter-claim, the defendant/petitioner has himself admitted that the present opposite party is in occupation of 12 decimals of land. Moreover, the said schedule of the counter-claim clearly demarcates the boundaries of the said portion admittedly occupied by the present opposite party.

Since no allegation of having planted tea plants have been made by the defendant/petitioner in any portion of the pleadings and it has been admitted that the present opposite party is in occupation of 12 decimals of land since 2013, there cannot be any impediment in the trial court granting the relief as sought by the petitioner by way of plucking tea leaves.

Heard learned counsel for the parties.

It is evident that the Trial Judge, while passing the initial order of *status quo*, did not ascertain the exact possession of the parties in respect of the suit property. It was actually observed by the trial court that both the plaintiff and the defendant were claiming to be in possession of the suit land contrary to each other.

It was also observed in the said order of *status quo* dated May 20, 2017 that the Trial Judge was of the opinion that there was allegation and counter-allegation regarding possessory right over the suit land which was to be determined at the stage of trial after taking evidence from both sides. Merely a *status quo* order was granted in respect of the nature, character and possession of the suit land till disposal of the suit.

However, the defendant/petitioner, in his counter-claim, has specifically described the property allegedly encroached by the plaintiff/opposite party since 2013 to comprise of 12 decimals of the land. In fact, in the schedule of the counter-claim, the petitioner has specifically mentioned the boundaries to such 12 decimals of land which is allegedly encroached by the opposite party.

As such, since admittedly the opposite party is in occupation of 12 decimals of land since 2013, which has been specifically described by the defendant/petitioner himself in his counter-claim, the presumption is

obviously that being in occupation of the said portion for the past 10 years, the plaintiff/opposite party has planted the tea trees standing on the said property.

As such, the plucking of tea leaves and pruning tea plants cannot, by any stretch of imagination, operate contrary to the *status quo* order.

That apart, it is well-settled that, at this preliminary stage, any order passed by the trial court or this court cannot have the effect of finally deciding the right, title and interest of the parties to the respective portions of the property as described in the plaint and the written statement/counter-claim. However, inasmuch as the possession is concerned, in view of the above findings, there cannot be any dispute that the plaintiff/opposite party is at present, irrespective of the legality of such possession, in occupation of 12 decimals of property.

As such, the trial court ought to have permitted the plaintiff/opposite party to pluck tea leaves and prune tree bushes on the property which is comprised of the said 12 decimals of land as described in the schedule of the counter-claim of the petitioner.

In such view of the matter, CO 87 of 2022 is disposed of by modifying the impugned orders passed by the appellate court as well as the trial court on the application under Order XXXIX Rule 4 of the Code of Civil Procedure filed by the opposite party to the extent

that the present opposite party shall be entitled to prune tea trees and pluck the tea leaves standing on the 12 decimals of land which is admittedly in occupation of the plaintiff/opposite party, as per the description as given in the schedule to the counter-claim filed by the defendant/petitioner.

It is, however, made clear that the right, title and interest of none of the parties in respect of any of the portions of the property described in the pleadings have been gone into by this court in any manner whatsoever and the Trial Judge shall adjudicate the said issues independently on their own merits, without being influenced by any of the observations made herein, on the basis of the evidence adduced by the parties, at the time of final disposal of the suit.

Since the suit is pending since 2017, it is expected that the suit and the counter-claim shall be decided by the Trial Judge expeditiously, preferably within one year from the date of communication of this order to the trial court.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)