

5.09.2023
SL No.16
Court No.3
sk

***Circuit Bench of Calcutta High Court
At Jalpaiguri***

C.O. 68 of 2023

CAN 2 of 2023

Subir Bhattacharjee @ Subir Bhattacharya

-vs-

Sevoke Commosales LLP & Anr.

Mr. Saurabh Guha Thakurata

Mr. Sukanta Sarkr

Mr. Bikash Singha

...for the petitioner.

Mr. Sapangshu Basu, Ld. Sr.Adv.

Mr. Milindo Paul

Mr. Nabankur Paul,

Mr. Debarshi Dhar

Mr. Abhishek Sarkar

...for the O.P.No.1.

Heard Mr. Saurabh Guha Thakkurata, learned counsel for the petitioner and Mr. Saptangshu Basu along with Mr. Milindo Paul, learned counsel representing the opposite party no.1.

This application under Article 227 of the Constitution of India impeaches the Order No 17 dated 20th June, 2023 passed by the learned Civil Judge (Junior Division), Jalpaiguri in Title Suit No. 102 of 2022.

Parties will be, for the sake of convenience referred to as they have been arrayed in the suit.

The plaintiff filed the suit for confirmation of title and possession, declaration, injunction and consequential relief stating, inter alia, that the plaintiff has acquired the prosperity in suit comprising in R.S.Dag No. 471 by purchase, in the year 2011.

It is the specific case of the plaintiff that the predecessor-in-interest of the plaintiff used to enjoy the property butted and bounded by walls on all sides and gate date fixed and the plaintiffs since purchase is occupying the same. It is the allegation of the plaintiff that the defendants are waiting for opportunity to forcibly enter into suit land which is in absolute possession of the plaintiff.

The defendants are contesting the suit by filing a written statement and it is their specific case of the defendant no. 1 purchased 1.0052 acres of land by three deeds in the year 1996 with specific boundary and admittedly their property is comprised in R.S.Plot No. 454/879 under the R.S.Khatian No. 42.

In course of hearing, it transpires that the land owned by plaintiff is not contiguous to the land owned by the defendants. Therefore, in absence of any allegation of encroachment or any prayer for recovery of possession or in absence of any allegation regarding boundary dispute, I do not find any reason to get the property investigated by Survey knowing Commissioner to adjudicate the issues involved in the suit between the parties.

It is rightly submitted by Mr. Guha Thakurata that the learned trial court passed the order impugned without assigning any reason.

Mr. Basu, learned senior counsel concurs with the view expressed by Mr. Guha Thakurata. The order impugned is absolutely non-speaking but one thing is clear that the learned Commissioner failed to carry out the Commission work on the points as was directed by the learned trial court. The report, therefore is of no use and deserves an order of rejection.

I am not inclined to interfere with the part of the order by which the report was rejected by the learned trial court.

Learned trial court is supposed to consider evidence which is fact in issue and which is relevant fact. In absence of boundary dispute particularly in the backdrop of averment made in the paragraph 23 of the plaint, learned trial court cannot be said to be justified in appointing Mr. Suvadip Sinha as Pleader Commissioner to hold the Commission work with the help of registered Amin. This part of the order stands quashed.

This revisional application is thus disposed of, however, without as to cost.

(Siddhartha Roy Chowdhury,J)