

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CIVIL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CO 75 of 2023

GOPAL CHAURASIA & ORS.
VS.
RESHMI DEVI RATHI & ANR.

For the Petitioners	: Mr. Sounak Bhattacharyya, Adv. Mr. Debanjan Das, Adv.
For the Opposite Parties	: Mr. Bikramaditya Ghosh, Adv. Ms. Supriya Singh, Adv.
Hearing concluded on	: .30 th August, 2023
Judgement on	: 8 th September, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Article 227 of the Constitution of India impeaches the order no. 11 dated 2nd May, 2023 passed by learned Civil Judge (Junior Division), Darjeeling in O.C. (Declaration) Suit No. 26 of 2022. By the impugned order learned Trial Court was pleased to reject the petition under Order XXVI Rule 9 of the Code of Civil Procedure filed by the plaintiff.
2. For the sake of convenience and brevity the parties would be referred to as they have been arrayed before the learned Trial Court.
3. Briefly stated, the plaintiffs filed the suit for declaration against the defendant before the learned Trial Court seeking declaration as to the title of the plaintiff in respect of 'A' schedule property and permanent

injunction restraining the defendant from causing any obstruction in the right of the plaintiff over 'A' schedule property with further declaration that the defendant took out construction encroaching the vacant area classified as galli area over 'B' schedule property and demolition of the construction so made, encroaching thereby the part of schedule 'A' and for recovery of possession.

4. The suit is contested by the defendant by filing written statement denying all material allegations made in the plaint. It is contended that the plaintiffs are the owners of land with structure on the Northern portion of land and building of the defendant. In between the buildings of the parties there exists one stairs (galli) connecting K.B. Bista Path and Bank road leading towards Goenka Gram. The said galli or stairs is measuring about 127 feet x 4 feet with concrete foot step followed by a structure of concrete foot step having length of 58 feet out of the total length of the galli of which 16 feet of the structure has been illegally dismantled by the plaintiff for illegal construction of their building.
5. According to Mr. Sounak Bhattacharyya, learned Counsel for the plaintiff, the order impugned is not maintainable for the simple reason that in absence of any local investigation, though admitted in his pleading about structure the defendant would create obstruction towards execution of the decree; in the execution proceeding.
6. Refuting such contention of Mr. Bhattacharyya, Mr. Bikramaditya Ghosh, learned Counsel for the opposite party/defendant submits that when it is admitted by defendant that a structure is situated over the galli and the defendant has given specific measurement of the area,

local investigation is not at all necessary to determine the issue or the suit.

7. Upon perusal the copy of the plaint, I find that plaintiffs are seeking declaration of title in respect of 'A' schedule property comprised within LR/RS plot no. 3146 covering an area 0.060 acres and plot no. 3147 covering an area of 0.050 acres under Khatian Nos. 1734, 1735 and 1736, while 'B' schedule land with structure is comprised in RS/LR plot no. 3148 and 3149 over which the plaintiffs have no claim and the said 'B' schedule property is butted and bounded by, to the north, house of the plaintiff, to the south, house of the defendant, to the east, Bank road and to the west, Bista Path.
8. The averment of the defendant in paragraph 6, 7 and 8 of her written statement suggests that the 'B' schedule property is lying in between the house of plaintiffs and defendant connecting K.B. Bista Path and Bank Road measuring about 127 feet and 4 feet with flight of stairs, a structure of concrete foot step with length of 58 feet out of total length of the galli of which 16 feet of structure allegedly dismantled by the plaintiffs. This averment matches with the description of the property as delineated in the plaint.
9. The object of holding local investigation is to elucidate any matter in dispute. When there is an admission on the part of the defendant in the written statement about the existence of the structure, stairs over the galli in between the house of plaintiff and defendant and squarely supports the case of the plaintiff, in my humble opinion, learned Trial Court did not commit any jurisdictional error while passing the order impugned.

10. The order impugned, therefore, does not warrant any interference.

The revisional application appears to be devoid of merit and is dismissed however, without cost.

11. Let a copy of this judgement be sent down to the learned Trial Court immediately.

12. Urgent photostat certified copy of this judgement if applied for, should be made available to the parties upon compliance of requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)