

16.05.2024
Ct. No. 19
Sl. No.148
Cp/gb

C.O. No. 207 of 2024

Sri Satya Kinkar Misra & ors.

Vs.

Srimatya Parul Bala Kar & ors.

Mr. Sounak Bhattacharya

Mr. Manish Kumar Das

.....for the petitioners.

1. The order dated December 14, 2023, passed by the learned Civil Judge (Junior Division), 1st Additional Court at Contai in Title Suit No. 78 of 2013 is under challenge before this court.
2. The petitioners are the defendant nos. 11, 12 and 13 in the said suit, who were added later. They have challenged the order of acceptance of the survey commissioner's report. According to the said defendants, the commissioner did not conduct any survey of(A), (B) and (C) schedule property mentioned in their written statement.
3. According to Mr. Bhattacharya, learned advocate for the petitioners, whether (A), (B) and (C) schedule lands appertained to Plot No. 1906/3320 or not, would be relevant for adjudication of the dispute. The commissioner's report should not have been accepted. Moreover, methodology used during the survey was also erroneous.

4. The learned court was of the view that the survey commissioner was not required to take measurements of the non-suit plot being Plot No. 1906/3320. The orders of the High Court were binding and measurement of the non-suit plot by survey, was beyond the scope of the suit.
5. Mr. Bhattacharya has drawn the attention of this court to the written statement and counter claim filed by the petitioners which included points for survey of Plot No. 1906/3320.
6. The records reveal that the defendant/petitioners herein were subsequently impleaded. Such order was challenged before the High Court in C.O.753 of 2018. His Lordship was of the view that the court had the discretion to add a party under Order 1 Rule 10 of the Code of Civil Procedure for effective adjudication of the lis. However, His Lordship clarified that the suit should essentially be confined to the issue of illegal encroachment on Plot No.1906/3319. The original defendants or the added defendants who may claim right, title and interest of the suit plot would be bound by the decree of the court. It was further clarified that the suit should not travel beyond Plot No.1906/3319. Relevant portion of the order passed in C.O.753 of 2018 is quoted below:-

“The revisionist objects to the order allowing addition of parties as he submits that the dispute between the added respondents and the principal

defendants is outside the scope of the main suit which is for seeking relief against the original defendants for encroaching upon the property of the plaintiffs.

There is some substance in the submission of the counsel for the revisionist. However, Order 1 Rule 10 is wide enough to allow a Court to include all persons necessary for the effective adjudication of nay lis.

In the above circumstances, this Court deems it necessary to clarify that the suit shall essentially be confined to the issue of illegal encroachment raided by the plaintiffs in plot nos.1906 by 3319. Any person whether it is defendants who may claim right, title and interest in the suit property shall be bound by any decree that the Court may pass in favour of the plaintiffs in the suit. The suit shall not travel outside the scope of the aforesaid plot being subject matter of the suit.”

7. It appears that the defendants/petitioners filed their written statement along with a counter-claim. They prayed for local investigation of Plot No.1906/3320. Such application was rejected. Challenging the order of rejection C.O.3936 of 2019 was filed. This Court upheld the order of rejection, inter alia, taking note of the earlier order passed in C.O.753 of 2018.
8. This Court held that the rejection of the application for local investigation was justified under the facts and circumstances of the case and in terms of the order passed by His Lordship in C.O.753 of 2018. This Court directed as follows:-

“A survey commissioner was appointed for demarcation of the plots in question which are the subject matter of dispute in the title suit and plot no. 1906/3320 and plot no. 1906/3319 of mouza Palpara have been demarcated by the survey commissioner. The report of the survey commissioner is also accepted.

It has been already directed by this Court that the subject matter of the suit, to be decided in trial

was, whether any encroachment had taken place on plot no. 1906/3319.

The learned court below rightly found that when the suit was restricted to alleged encroachment on plot no. 1906/3319 of Mouza-Palpara, local investigation of plot no. 1906/3320 which was the subject matter of the counter-claim was not required as plot no. 1906/3320 was outside the scope of the suit. The court below has rightly held that the court could not travel outside the scope and ambit of the suit as directed by this Hon'ble Court.

Furthermore, the defendant nos. 11 to 13/petitioners always had liberty to raise objections with regard to the survey commissioner's report filed earlier. But in the facts of the given case no separate survey commissioner is required for local investigation of plot no. 1906/3320.

With the above observations, the revisional application is disposed of. ”

9. Mr. Bhattacharya submits that liberty was given to the petitioner to raise an objection to the survey commissioner's report filed earlier. Thus, an objection was raised and the learned court turned down such objection.

10. I find that the objection was again raised with regard to non-survey of non-suit plot being Plot No.1906/3320. This issue has already been settled by previous orders. By the order passed in C.O.753 of 2018, the adjudication of suit had been restricted to Plot No.1906/3319. Thus, the court could not direct survey of non-suit plot. Such issue barred by the principles of res judicata.

11. Under such circumstances, the order of His Lordship dated February 18, 2019 passed in C.O.753 of 2018 is

binding upon the petitioner and this Court cannot interfere with the order impugned.

12. The revisional application is disposed of without any interference.

13. Disposal of this revisional application will not prevent the petitioner from proceeding in accordance with law.

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

(Shampa Sarkar, J.)