

25.09.2024
sayandeep
Sl. No. 11
Ct. No. 08

CO 1611 of 2024

Subrata Banerjee & anr.
-Versus-
Mumpi Pramanik

Mr. Purnasish Gupta
Mr. Jayanta Kr. Mukhopadhyay
Ms. M. Dutta

..... for the petitioner

The instant Revisional Application is directed against an order no. 13 dated 06.03.2024 passed by the learned Civil Judge (Jr. Division), 3rd Court, Alipore South 24 Parganas in Miscellaneous Pre-emption Case no. 22 of 2023 by which an application under Order 26 Rule 9 of the Code of Civil Procedure is rejected.

The petitioner filed application under Section 8 of the West Bengal Land Reforms Act, 1955 as an adjoining owner seeking pre-emption in respect of the suit property sold to the principal opposite party. The said application for local investigation was rejected by the Trial Court on the premise that the schedule of Commission does not warrant the investigation under the aforesaid provision.

What can be gathered from the findings made in the impugned order that the purpose for which the investigation is sought, is beyond the purview of the scope of the litigation, more particularly, when the pre-emption is sought as an adjoining owner in

respect of a suit property. It is undisputed that a right of pre-emption is conferred upon the adjoining owner under Section 8 of the said Act in the event the adjoining land is sold to the third party. An investigation under Section 26 Rule 9 of the Code of Civil Procedure can be resorted in the event there appears to be a boundary dispute which cannot be adjudicated in a proceeding initiated under Section 8 of the said Act. The petitioner has appended the schedule of Commission for investigation in an application for appointment of the Commissioner in respect of the property which is outside the purview of the said proceeding. The Court shall not ordinarily direct the Commissioner to investigate the property which is not included in the suit or the proceedings. The averment is made in the said application that the subsequent purchaser of the adjoining property having encroached upon a portion of the property owned by the petitioner which does not come within the peripheral of the issues involved in a proceeding of such nature.

It is sought to be contended that encroachment is made in violation of an order of status-quo in respect of the property and, therefore, the Commissioner should be appointed to investigate the same. The order of status-quo passed in a proceeding is restricted to the property described in the Schedule appended thereto; even if the said allegation is

perceived to be true, it does not impinge upon the order of status-quo. The order of restraint has to be construed in the perspective of property which is a subject matter of dispute and cannot transgress its limits beyond the same.

This Court, thus, does not find any infirmity or illegality in the impugned order.

The Revisional Application is dismissed.

No order as to costs.

(Harish Tandon, J.)