

26.06.2024
(D/L-27)
Ct.-19
(Susanta)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

C.O. 2225 of 2024

Sindhu Bala Nath & Ors.

-Vs-

Shankar Nath & Ors.

Mr. Dyutiman Banerjee,

Ms. Dolan Samanta,

... For the Petitioner.

The plaintiffs in a suit for declaration of title and recovery of possession are the petitioners of the instant revisional application under Article 227 of the Constitution of India which is directed against order dated April 16, 2024 passed by the learned Civil Judge (Senior Division), Haldia, in the said suit being Title Suit No. 14 of 2018.

The petitioners in the said suit had filed an application under Order XXVI Rule 9 of the Code of Civil Procedure praying local investigation of the suit property *inter alia* to ascertain the extent of alleged encroachment by the defendants in the suit property.

The learned Trial Judge by the order impugned has dismissed the said application holding *inter alia* that the suit has reached to the stage of peremptory hearing and the petitioners are praying such investigation to collect evidence which is not permissible.

Mr. Banerjee, learned advocate for the petitioners, relying on the decision of the learned Single Judge of the High Court of Hyderabad in the case of ***Jajula Koteswar Rao Vs. Ravulapalli Masthan Rao*** reported in **2015 SCC On Line Hyd 740** submits that when there is an

allegation of encroachment, the local investigation should be done.

Heard Mr. Banerjee, perused the materials on record.

In the plaint, the alleged encroached portion of the suit property has been specifically described and delineated in a sketch-map annexed with the plaint; the plaintiff is required to establish such encroachment by adducing cogent evidences. The defendants have already disclosed their defence, at this stage, the attempt of the plaintiff to have the local investigation of the suit property to ascertain the extent of alleged encroachment certainly aimed to collect evidence; the learned Trial Judge has rightly held that it is not permissible.

The decision of the learned Single Judge of the High Court of Hyderabad relied on by Mr. Banerjee is not applicable in the facts and circumstances of the present case.

The order impugned, therefore, does not call for any interference.

C.O. 2225 of 2024 is dismissed with the above terms without any order as to costs.

The learned Trial Judge is requested to expedite the disposal of the suit.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)