

28.06.2024
Item No.25, DL
Ct.19
A.J.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 2264 of 2024

**Asit Baran Modak
-Vs-
Samir Kumar Modak**

Mr. Sukanto Chakraborty,
Mr. Anindya Halder.
.....for the petitioner.

The instant application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for declaration of title and injunction which is directed against Order No.13 dated May 02, 2014 passed by the 2nd Court of the learned Civil Judge (Junior Division) at Hooghly in the said suit being Title Suit No.376 of 2021.

The learned Trial Judge by the order impugned has dismissed an application filed by the plaintiff for local investigation of the suit property on the ground that other co-sharers have not been impleaded in the suit.

Mr. Chakraborty, learned advocate for the petitioner submits that to ascertain the extent of encroachment in the schedule 'A1' property and the existence of the construction made by the defendant thereon, the local investigation, as prayed for, is necessary.

Heard Mr. Chakraborty, perused the materials on record.

The plaintiff is claiming his right title interest over schedule 'A' property and exclusive right of user over the passage described under schedule 'A1'. The area which is allegedly encroached upon by the defendant has been described under schedule 'C', and to remove such encroachment, the plaintiff has prayed for a decree of mandatory injunction.

The said properties have been delineated in a sketch map appended to the plaint.

To succeed in the suit, the plaintiff has to adduce cogent evidences which he is not entitled to collect by resorting to the provision of Order XXVI Rule 9 of the Code of Civil Procedure.

This Court though does not approve the reasons assigned by the learned Trial Judge in refusing the prayer of the plaintiff, but the conclusion being correct, is not inclined to interfere with the order impugned.

C.O. 2264 of 2024 is therefore dismissed without any order as to costs.

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

(Biswajit Basu, J.)