

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 2124 of 2022
with
IA No. CAN 1 of 2024
(Application not in the file)

Utpal Koley
Vs.
Subhasish Palui

Mr. Pinaki Ranjan Mitra
... For the petitioner

Mr. Nilanjan Bhattacharjee (through VC)
Mr. Sanjoy Karan
... For the opposite party

1. This revisional application has been filed assailing the order dated 11th July, 2022 passed by the learned Civil Judge (Senior Division), 1st Court, Howrah, in connection with Title Suit No.218 of 2019 wherein the learned Judge rejected the application for hearing of an application under Order XXXIX Rule 7 of the Code of Civil Procedure (hereinafter referred to as the 'CPC') prior to hearing of the application under Order XXXIX Rules 1 and 2 of the CPC.

2. Learned counsel appearing on behalf of the petitioner has submitted that this is a suit for specific performance of agreement for sale of four cottahs of land mentioned in the schedule to the plaint and the application under Order XXXIX Rule 7 of the CPC was filed to identify the subject land prior to hearing of the injunction application.

3. Learned counsel appearing on behalf of the opposite party has submitted that the injunction application was filed with a prayer for restraining the defendant/petitioner herein from alienating the subject land.

4. On careful scrutiny of the record, it comes to my notice that the alleged agreement for sale was executed in respect of the land without any boundary and, accordingly, the suit was filed with a schedule without any boundary.

5. Learned counsel appearing on behalf of the petitioner submitted that topography and identification of land is required for the purpose of hearing of an injunction application under Order XXXIX Rules 1 and 2 of the CPC.

6. After careful perusal of the entire records as well as having heard the learned counsel on behalf of the parties, I find that the alleged agreement for sale was executed between the parties in respect of three cottahs of land out of 01 acre 73 decimals corresponding to RS Dag No.1156 and LR Dag No.1111 corresponding to LR Khatian No.932 and other portion of land is about one cottah of land out of 09 decimals with respect to RS Dag No.978 corresponding to LR Dag No.978/1235 appertaining to LR Khatian No.932. In terms of prayer made in the injunction application as submitted by the learned counsel for the opposite party as well as the schedule to the plaint, I find that local inspection of the subject land will not serve any

purpose prior to hearing of the injunction application under Order XXXIX Rules 1 and 2 of the CPC.

7. In the aforesaid view of the matter, I find hardly any infirmity in the order impugned.

8. In the result, the order impugned dated 11th July, 2022 passed in connection with Title Suit No.218 of 2019 stands affirmed.

9. The revisional application, being CO 2124 of 2022, stands dismissed.

10. The connected application, being CAN 1 of 2024, also stands disposed of.

11. Learned Civil Judge (Senior Division), 1st Court, Howrah, is requested to dispose of the application under Order XXXIX Rules 1 and 2 of the CPC within one month from the date of communication of this order.

12. Learned counsel appearing on behalf of the parties are at liberty to bring this order to the notice of the learned Civil Judge (Senior Division), 1st Court, Howrah, forthwith.

13. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

14. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)