

06.08.2024
(D/L-28)
Ct.-19
(Susanta)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

C.O. 2313 of 2023

Smt. Mina Mallick

-Vs-

Sri Partha De & Anr.

Mr. Aniruddha Chatterjee,

Mr. Srijib Chakraborty,

Mr. Abir Lal Chakravoreti,

... For the Petitioner.

The plaintiff in a suit for declaration of title and other consequential reliefs is the petitioner of the instant application under Article 227 of the Constitution of India.

The said suit being *Title Suit no. 174 of 2014* is pending before the 2nd Court of learned Civil Judge (Junior Division) at Alipore, District: 24 Parganas (South).

The petitioner alleged that the defendant no.1, in violation of the order of injunction passed in the said suit has encroached upon the suit property and has constructed a multi storied building thereon.

The petitioner with the said allegation had filed an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, praying an order of mandatory injunction that the defendant no.1 be directed to hand over the possession of the suit property and to demolish the said multi storied building.

The learned Trial Judge by the order no. 119 dated March 16, 2020 had dismissed the said application.

The petitioner aggrieved by said order has preferred the *Misc. Appeal No. 135 of 2020* pending before the Additional District Judge, Fastrack 1st court at Alipore District: South 24 parganas.

The petitioner in the said appeal had filed an application under Order XXVI Rule 9 of the Code for

investigation of the suit property *inter alia* to note and draw the *sketch map* of it.

Mr. Chatterjee, learned counsel for the petitioner submits that the investigation as prayed for is necessary for the effective adjudication of the said Misc. Appeal.

Heard Mr. Chatterjee, perused the materials-on-record.

The prayer for investigation of the suit property is beyond the scope of the said Misc. Appeal, besides, there is/are no averment(s) in the plaint regarding encroachment of the suit property, as such, the learned Trial Judge is absolutely justified in dismissing the application under Order XXVI Rule 9 of the Code.

Mr. Chatterjee submits that the application for amendment of the plaint to bring the allegation of such encroachment on record has already been taken out by the petitioner.

Be that as it may, C.O 2313 of 2023, for the reasons discussed above is dismissed without any order as to costs.

It is however made clear that this order will not prevent the petitioner to apply for such investigation, if so advised, at the appropriate stage 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.)