

S/L 6
06.8.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 2643 of 2024

Smt. Maya Rani Pal @ Maya Pal

Vs.

Sri Ganesh Koiri & Ors.

Mr. Amal Krishna Saha

Mr. Samir Kumar Chaki

...for the Petitioner.

The instant application under Article 227 of the Constitution of India is directed against the Order No.190 dated June 06, 2024 passed by the 1st Court of learned Civil Judge (Junior Division) at Barrackpore, District: 24 Parganas (North) in *Title Suit No.67 of 1998*.

The petitioner and the opposite party no.1 had filed two suits for declaration of their right, title, interest over the properties described in the schedule appended to the plaint of the said suits which were heard analogously. The suit filed by the petitioner being *T.S. No.67 of 1998* was dismissed and the suit filed by the opposite party no.1 being *T.S. No.30 of 1998* was decreed.

The petitioner had challenged the said two decrees in two appeals being *T.A. No.19 of 2013* & *T.A. No.20 of 2013* which were allowed by remanding the suits to the learned Trial Judge after setting aside the impugned judgments and decrees with a direction to decide the application under Order VI Rule 17 of the Code of Civil Procedure filed by the petitioner in one of the appeals and if the same is allowed, parties were granted liberty to adduce further evidence.

The said application for amendment was allowed, and thereafter the petitioner in his suit had filed an application under Order XXVI Rule 9 of the Code for investigation of the suit properties of the said suit on the following points:-

1. *To peruse and inspect the title deeds and other relevant title related documents of A and C schedule property mentioned in plaint, copy of plaint will be annexed herewith the writ, from both the parties.*
2. *To take actual measurement of A and C schedule property.*
3. *To take note on the construction of sunshed and room on the southern side of A schedule property and after taking measurement report that whether such sun shed and room has been constructed leaving statutory side space or not.*
4. *That to inspect and report whether the privy and bath has been constructed by defendant violating the provision of statutory side space and encroaching A schedule property.*
5. *To take measurements as to the extent of encroachment in schedule A property of the plaintiff.*
6. *Local features*
7. *Sketch map*

The learned Trial Judge by the order impugned has dismissed the said application holding that since the re-trial of the suit is on the basis of an order of close remand, the investigation of the suit property as prayed for cannot be allowed.

Mr. Saha, learned advocate for the petitioner submits that the order of remand is not restricted to any particular issue; therefore the learned Trial Judge has committed error of law and fact in treating it as an order of close remand and in dismissing the application for local investigation on the said ground.

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

The order of remand does not indicate that the suits have been remanded for trial on some framed issues, therefore the said order does not possess the character of an order of remand under Order XLI Rule 25 of the Code, rather the said order indicates that it is an order under Order XLI Rule 23 thereof.

Be that as it may, it appears from the record that the petitioner is claiming to be the owner of the property described in *Schedule C* appended to the plaint of *T.S 67 of 1998* which is part of *Schedule A* thereof. The petitioner by the proposed investigation sought to demonstrate that the defendant of the said suit has encroached upon his land.

The description of the said *Schedule A* and *C* property are available on record. The petitioner has alleged in the plaint that there is a common passage between his land and the land of the opposite party no.1 which the defendant has encroached upon. The description of the said passage is available from the records; the dispute is not in respect of the existence of such passage, but user of it, which cannot be ascertained by local investigation.

For the purpose of determination of the extent of title of the petitioner in said *Schedule A* property, the local investigation as prayed for is also not necessary as the same would be determined on the basis of evidence to be adduced by the parties in course of trial of the suit.

The alleged encroached portion of the said *Schedule C* property has been described under *Schedule D*,

as such, to ascertain the extent of encroachment, the investigation as prayed for is also not necessary.

This Court though does not endorse the reasoning of the order impugned, but the conclusion being correct, is not inclined to interfere with it.

CO 2643 of 2024 is dismissed with the above observations without any order as to costs.

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

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

(Biswajit Basu, J.)