

S/L 37
15.04.2024
Court. No. 3
*Suvayan/
Sourav*

CO 2794 of 2022

**Smt. Gita Roy & Ors.
Vs.
Ashok Kumar Roy & Anr.**

*Mr. Debabrata Acharyya
Mr. Sital Samanta*

...for the petitioners.

*Mr. Rajdeep Bhattacharya
Mr. Sauradeep Dutta
Mr. Debashis Banerjee*

...for the opposite parties.

1. Both the petitioners and the opposite parties are represented by their respective learned advocates.
2. I have heard the learned advocates for and against the instant revisional application.
3. The instant matter is now taken up for passing appropriate order.
4. By filing the instant revisional application the Order No. 11 dated 19.07.2022 as passed by learned Civil Judge (Junior Division), 2nd Court, Chandernagore, Hooghly in Title Suit No. 50 of 2021 has been assailed by the defendants. By the impugned order learned Trial Court allowed the application of the plaintiffs for appointment of an Advocate Commissioner under Order 39 Rule 7 of the Code of Civil Procedure.
5. In support of the instant revisional application learned advocate for the defendants/revisionists at the very outset draws attention of this Court to the copy of the plaint as filed by the plaintiffs in Title Suit No. 50 of 2021, copy of the application for commission as filed by the

plaintiffs in the trial court as well as the impugned order. It is submitted that from the schedule of the proposed work of commission it would reveal that the plaintiffs' intention is to fish out the evidence which is not permissible in the eye of law. It is, thus, submitted on behalf of the defendants/revisionists that a serious miscarriage of justice has been caused by passing the impugned order which also causes serious prejudice to the interest of the defendants in the trial.

6. *Per contra*, learned Advocate for the plaintiffs/opposite parties submits before this Court that there cannot be any justifiable ground for interfering with the order impugned as the proposed work of commission as mentioned in the schedule of the commission application is very much necessary for effective adjudication of the suit as filed by his client before the learned Trial Court.

7. On perusal of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties it appears to this Court that by filing Title Suit No. 50 of 2021 plaintiffs have prayed for their declaratory right of easement over the 'suit strip of land' as well as for permanent injunction since it has been alleged in the plaint that such easementary right of the plaintiffs have been violated at the instance of the defendants. In their written statement, however, the defendants have denied such right.

8. Keeping in mind, the above factual aspects if I look to the application for commission as filed by the plaintiffs

under Order 39 Rule 7 of the Code of Civil Procedure it appears to me that the plaintiffs had filed the said application for ascertaining certain things which according to the plaintiffs occurred during the pendency of the suit that is by way of subsequent events.

9. In considered view of this Court, the proposed work of commission is no way involved in fishing out the evidence to establish the plaintiffs' claim of easement over the 'suit strip of land' which has, however, been denied from the side of the defendants.

10. In view of the discussion made hereinabove this Court, thus finds no illegality and/or infirmity in the order impugned.

11. As a result, the instant revisional application being CO 2794 of 2022 fails and is dismissed.

12. The impugned Order No. 11 dated 19.07.2022 as passed by learned Civil Judge (Junior Division), 2nd Court, Chandernagore, Hooghly in Title Suit No. 50 of 2021 is hereby affirmed.

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

(Partha Sarathi Sen, J.)