

Item No.24
06.05.2024
Court. No. 19
GB

C.O. 4265 of 2023

Sri Rajesh Kumar Shaw
Vs.
Sri Arjun Das & Anr.

Mr. Siva Prasad Ghosh

...for the Petitioner.

1. The revisional application arises out of an order dated November 16, 2022, passed by the learned Civil Judge (Junior Division), Bidhannagar in Title Suit No.243 of 2022.
2. By the order impugned, the learned court rejected an application for local inspection. According to the learned court, the petition could not be allowed at that particular stage. The court was further of the view that the purpose of allowing local inspection was not for collection of evidence, but to ascertain the condition of the suit property.
3. The learned advocate for the petitioner submits that the suit was filed for declaration that Schedule 'B' property was a common passage. Further decree for permanent injunction restraining the defendants and their men and agents from raising illegal construction contrary to the municipal laws on 'C' schedule property, was also prayed. In the plaint, the suit properties have been divided into schedules 'A', 'B' and 'C'. Schedule 'A' has been described as land measuring about 2 Cottahs 8 Chittaks 40 Sq. ft.

Schedule 'B' is a passage running along the Western side of schedule 'A'. Schedule 'C' is a space on the Western side of schedule 'B' property.

4. The petitioner's case was that the petitioner had been enjoying schedule 'A' property. The defendants were trying to raise a construction on the Western side of the property beyond the common passage of schedule 'A', namely, beyond schedule 'B' property. The defendants were trying to encroach into the passage by raising construction, without leaving side space. This was contrary to the municipal laws. The petitioner prayed for local inspection. The points for local inspection were as follows:-

"Points for LOCAL INVESTIGATION"

1. To go to the Schedule-B property and take measurement and as well as identification of land.
2. To see whether the construction has been made leaving the required side space at the Western side of the Schedule-B property as per Municipal Rules and by law.
3. To take measurement and the condition of Schedule-C property.
4. To take measurement of distance from the boundary line of construction work of Defendants to Schedule-B property from Ground level to upper level.
5. To see and report whether the construction work in the 'C' Schedule suit property is on progress or not?
6. To see and report how far the construction has been made in the 'C' Schedule property.
7. To see and report whether the light and or as well as easementary right of the plaintiff has been infringed/curtailed or not?
8. To draw a rough sketch map of the suit property.
9. Any other local feature of the suit property."

5. The defendants in their written statement, had specifically stated that they were residing on the Western side of the plaintiff's premises and both the premises were separated by a passage running North to South, measuring about 4 ft. wide and 33 ft. 6 inches long. They have denied that the said passage was for common use of the plaintiff as also the defendants. The allegation of unauthorized construction was also denied. Rather, the defendants stated that there was no existence of any 'C' Schedule property on the Western side of schedule 'B'. The defendants were constructing on the basis of the PMAY scheme. Thus, the municipal laws would not be applicable. It has been further stated that the construction was being supervised by the executive engineer, phase wise.
6. Under such circumstances, this Court is of the view that the points for local inspection are not relevant at this stage for the purpose of adjudication of the issues. The existence of schedule 'B' is not denied. The existence of schedule 'C' has been denied and such property cannot be demarcated by a local inspection. The Baranagar municipality is a party to the suit and issues which have been raised with regard to the illegal construction, can always be taken care of by the municipality rather than appointment of an advocate commissioner. Rough sketch map of the suit property

and other local features are not relevant. Thus, the learned court had rightly rejected the said application at the stage in which it was filed. However, the petitioner is at liberty to take appropriate steps in accordance with law, at the correct stage.

7. Accordingly, the revisional application is disposed of.
8. However, there will be no order as to costs.
9. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)