

06.05.2024
Sl. No.25(ML)
srm

C.O. No. 4273 of 2023

Sri Mohitosh Mandal

Versus

Sri Arabinda Nath Das @ Arabinda Das & Anr.

Mr. Yashraj Roy,
Mr. M.K. Dey,
Ms. Swapna Mitra,
Ms. Monalisa Maity

...for the Petitioner.

Mr. Kamalesh Jha,
Mr. Diptyendu Kumar Pal

...for the Opposite Parties.

1. The revisional application arises out of an order dated October 17, 2023 passed by the learned Civil Judge (Junior Division), 2nd Court, Contai, in O.S. No.199 of 1995. The petitioner is the defendant No.1, in a suit for eviction.
2. By the order impugned, the learned trial judge rejected an objection filed by the petitioner, to the report of the investigation commissioner. It is urged that on similar points, a local inspection had already been held and such order of local inspection had been upheld up to the High Court.

3. The petitioner contends that when there were findings with regard to the same issues in an earlier proceeding, such finding would operate as *res judicata* in all subsequent proceedings with regard to the matter of local investigation. It is further contended that by misleading the learned trial judge with regard to the name of the Judge who had passed the order in C.O. No.3033 of 2005, the order impugned was obtained.
4. Mr. Jha, learned Advocate appearing on behalf of the plaintiffs submits that this is a suit for eviction under the Transfer of Property Act. In the said suit, the written statement was filed. The petitioner denied that the area under occupation of the petitioner was plot No.101, as wrongly stated in the plaint. The defence case was that the defendants were occupying plot No.233. The said plot No.233 was not the subject matter of the suit. Accordingly, for elucidation of such dispute and for proper ascertainment of the plot number on which the defendants were actually residing, local investigation was necessary, by relayment. There was a dispute with regard to the identity of the plot and the area under occupation of the petitioner. The local investigation was allowed by the learned court and there was no challenge

to the order allowing local investigation. After the report was filed, an objection was raised.

5. According to the defendants, the report and the field book were erroneous. The selection of the fixed points was erroneous. The relayment of settlement records was erroneous. The drawing and the sketch map were not in conformity with the field book. The principles of survey, had not been followed.
6. The learned court found that the investigation commissioner was cross-examined at length. The investigation was done with fixed points taken as 'X', 'Y' and 'Z', which appeared at page 18 of the field book. The entire commission was conducted in the presence of an Amin, duly engaged by the defendants. The handmade sketch map and those in the field note book were found to have corroborated each other. It was further evident that the survey commissioner had accurately pointed out the fixed points for making the survey work. In the field note book, each and every date of the survey work had been noted. The sketch map clearly indicated the position of the suit property. The report was explicit and in details. The survey work and the final report of the survey commissioner were found correct and the

contention of the defendants that the report was prepared at the desk of the commissioner, was not accepted.

7. In the cross-examination, the defendant No.1 could not demolish the contents of the report. The evidence was unshaken. The landlord was pursuing his remedy for 28 years and the suit had unnecessarily dragged on. The field note book, hand sketch map and the final report of the investigation were accepted.
8. The only contention of the petitioner is that on the self-same points, a local inspection was held and a second inspection could not be allowed on similar issues.
9. Coming to the writ issued on the basis of the application of the defendants under Order XXXIX Rule 7, it appears that local inspection was prayed for on the following points:
 - “1) To note and report what is present position of the KA schedule premises.
 - 2) To note and report whether the suit premises is about to dilapidated conditions and the same is repairable or not.
 - 3) To draw a hand sketch map of the suit land and premises.
 - 4) To note and report all local features on the location what will be seen and show in the time of inspection.”
10. The petitioner is unable to satisfy the Court whether any such local inspection was at all done or what was the

report of such local inspection. In any event, such application was filed in connection with an application for repair of the suit premises and to note the condition of the premises and its local features. It was filed in aid of the application for repair.

11. Local investigation on the other hand was allowed for identification of the property which the defendants were occupying. The dispute was with the dag numbers. Such order allowing the local investigation was not challenged. The learned court found that the investigation was done properly, upon taking accurate fixed points and the Amin was also present during such survey. The court found that the authenticity and the correctness of the said report could not be demolished by the defendants. The dispute was with regard to the identity of the plots. This could only be achieved by local investigation. This dispute could not be elucidated by local inspection.

12. Under such circumstances, nothing remains to be decided in the revisional application.

13. The scope and subject matter of the application for local inspection and local investigation, are different.

14. The order impugned does not call for any interference as the petitioner has failed to point out to this court the

specific defects in the commissioner's report. Vague and omnibus statements that the report was erroneous on all scores, was not enough.

15. The revisional application is, thus, dismissed.

16. There shall be no order as to costs.

17. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)