

16.05.2024
Sl. No.11(DL)
srm

C.O. No. 4335 of 2023

**General People of Village : Kaliganj & Harinathpur, P.O. &
P.S. Kaliganj, District : Nadia & Ors.**

Versus

Subrata Bhattacharya & Ors.

Mr. Pingal Bhattacharyya,
Mr. Neil Basu,
Mr. Rajdeep Singha,
Mr. Sankha Biswas

...for the Petitioners.

Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta,
Mr. Ankit Chatterjee

...for the Opposite Parties.

1. Affidavit-of-service is taken on record.
2. The revisional application arises out of an order dated November 24, 2023 passed by the learned Civil Judge (Junior Division), Additional Court, Krishnanagar, Nadia, in Title Suit No.40 of 2020.
3. By the order impugned, the learned court has allowed an application under Order XXVI Rule 9 of the Code of Civil Procedure filed by the defendant Nos.3 to 6. According to the learned court, the allegation of encroachment

required a local investigation, as there was a dispute that the properties were overlapping.

4. In my view, such observation and the justification for allowing the local investigation are erroneous.
5. The plaintiffs filed a suit for declaration of a right of easement, through a passage in respect of plot No.948 corresponding to Khatian No.2033 namely the 'A' schedule property. According to the plaintiffs, the opposite party Nos.1 to 6 were the owners in possession of the property in question, but for the past 60 years, the plaintiffs had been using the passage and they had a right of easement through the passage. When the opposite party Nos.1 to 6 started construction of the gate on the said passage, the plaintiffs' right was threatened and hence the suit was filed.
6. During the course of hearing of the injunction application, the plaintiffs prayed for local inspection. A report was filed. The opposite party Nos.3 to 6, thereafter, filed the application for local investigation on the ground that at the time of local inspection they were neither served with notice nor were they present during such inspection. The report of the Advocate commissioner was defective and incomplete. The exact

position of the passage and local features were not reflected in the report.

7. The said opposite parties filed an application under Order XXVI Rule 9 of the Code of Civil Procedure, seeking local investigation-cum-local inspection. They prayed that a survey passed commissioner be appointed to survey the plots, by relaying the revenue map to be supplied by the parties and indicate a clear picture of the plots and the area in question. Further information should be available from the report as to whether the plots were fenced with bamboo fencing and barbed wire or not. In general, the total picture of the buildings and the plots all around, should be brought on record by local investigation. Another point for investigation was the nature and classification of the lands in question.
8. Mr. Bhattacharya, learned Advocate appearing on behalf of the plaintiffs submits that when it was an admitted position that the defendants were owners of the property in question, further local investigation was not required. The plaintiffs claimed a right of passage through the property in question. There was no boundary dispute. The parties did not have rival claims of title over the

passage. There is no allegation of encroachment. Thus, this was not a fit case for allowing local investigation.

9. Mr. Chattopadhyay, learned Advocate appearing on behalf of the defendants submits that the suit is not maintainable. The suit was filed in a representative capacity, but no leave was obtained. Local investigation would be necessary in view of the fact that all the defendants were not notified about the local inspection and they were not in a position to indicate the correct picture of the property to the Advocate commissioner.

10. Having heard learned Advocates for the respective parties, this Court finds that this is not a dispute with regard to overlapping of suit plots. Parties are not claiming right, title and possession in respect of the passage. There is no boundary dispute. There is no requirement for a local investigation. Elucidation of any kind of boundary dispute between the parties over a common property, is not required. This is not a common passage.

11. This court finds that for the purpose of hearing of the injunction application and to enable the court to pass necessary orders as parties have prayed for injunction, the local features of the property in question is required

to be brought on record. Such exercise should be undertaken to facilitate a decision on the prima facie case, balance of convenience and inconveniences and irreparable loss and injury.

12. Under such circumstances, the order impugned is set aside. The learned Advocate commissioner who was appointed for making the local inspection earlier, shall make a further inspection in the presence of all the parties including the plaintiffs, opposite party Nos.1 to 6 as also opposite party Nos.7 to 9. Whether there is any passage through the suit plot which had been fenced either permanently or temporarily, shall be inspected along with the local features. A report shall be prepared.

13. The date of inspection shall be fixed by the court. The inspection shall be held at the cost of the opposite party Nos.1 to 6. The report shall be filed in court on the date to be fixed by the learned court. Remuneration shall also be fixed by the learned court. Both the reports shall be made part of the records and the learned court shall proceed in accordance with law.

14. The revisional application is, thus, disposed of.

15. There shall be no order as to costs.

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

(Shampa Sarkar, J.)