

31.07.2024
Item no.03
Ct No.01
s.pal

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

CO 67 of 2024

GANENDRA BAIDYA @ JNENDRA BAIDYA AND ANR
VS
KAMINI MOHAN ROY AND ORS.

Mr. Bhaskar Roy Mahashaya
Mr. Sannidhya Dutta
Ms. Munmun Sonab

...for the petitioners

Mr. Momenur Rahman
Mr. Bikash Singha

...for the State

1. The plaintiffs in a suit for declaration of title and recovery of possession have preferred the present revisional application under Article 227 of the Constitution of India against an order whereby the plaintiffs' application under Order XXVI Rule 9 of the Code of Civil Procedure, for holding a local investigation with regard to ascertainment and location of the particular plot numbers as mentioned therein and ascertainment of the age and condition of the alleged dwelling house standing thereon, has been refused by the trial court primarily on the ground that the plaintiffs have sought to fish out evidence on pleadings

which can be otherwise proved by way of documents.

2. Learned counsel for the petitioners argues that the defendants/opposite parties, in their written statement-cum-counter claim, particularly in paragraph no. 8(iii) thereof, have alleged that during the LR settlement operation RS plot nos.794 and 795 were renumbered as LR plot nos.997 and 998 and 0.06 acres in LR plot no. 997 and 0.06 acres in LR plot no.998 was recorded in the name of the defendant no. 1.
3. It is argued that the local investigation is necessary for the purpose of ascertainment of the exact location of the said plots in order to bring on record the portions of the said plots which are respectively owned and occupied by the plaintiffs and the defendants. Also, the age of the dwelling house is to be ascertained, since the defendants have alleged that they are in possession of the said property by making construction thereon for quite a long period of time.
4. Learned counsel for the defendants/opposite parties opposes the prayer and submits that the plaintiffs have to prove their own case on the strength of documents.
5. The title deed furnished by the plaintiffs, it is argued, does not, in its schedule, clearly indicate

the boundaries of the property, nor does it exactly specify as to which portions of the respective plots were transferred. Hence, since the deed itself is vague, the plaintiffs cannot be permitted to better their case by fishing out evidence.

6. A copy of the title deed of the plaintiffs is handed over by learned counsel for the defendants and is kept on record. It transpires from the same that the defendants/opposite parties are *prima facie* justified in arguing that no specific demarcation or boundaries are mentioned in the schedule of the said deed. In fact, the learned trial Judge, while passing an order of status quo, observed, inter alia, that the specific boundary of the suit property cannot be determined from the documents furnished by the plaintiffs.
7. It is well-settled that the case of the parties with regard to title and possession are to be primarily proved on the strength of title deeds and/or collateral documents. Also, extracts of records-of-rights may very well be produced to vindicate the respective stands of the parties as to their possession.
8. In the event the plaintiffs cannot sustain the plaint case on the basis of their title deeds, they cannot be permitted to fish out evidence by

having a local investigation to demarcate specific portions of the property.

9. Thus, I find that the learned trial Judge was quite justified in observing that the plaintiffs have sought to fish out evidence which is otherwise ascertainable by documents to be furnished by the parties.
10. Thus, I am not inclined to interfere with the impugned order. The parties are to prove their respective cases on the strength of their title deeds as well as the extracts of the records of rights and, for such purpose, no aid of local investigation is necessary.
11. Hence, CO/67/2024 is dismissed on contest.

(Sabyasachi Bhattacharyya, J.)