

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Civil Revisional Jurisdiction)**

APPELLATE SIDE

Present:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 74 of 2023

With

CAN 2 of 2024

Smt. Rachana Pradhan & Ors.

Vs.

Smt. Shalla Sultan Plant

For the petitioners : Mr. Sandip Mandal
Mr. Abhilash Mittal

For the opposite party : Mr. Jishnu Saha
Mr. Nabankur Paul
Mr. Rajdeep Bhattacharjee
Ms. Sutapa Sen Paul
Mr. Deborshi Dhar

Heard on : 10.07.2024

Judgment on : 23.07.2024

Ajoy Kumar Mukherjee , J.:

1. Present application under article 227 of the constitution of India has been preferred challenging order no.55 dated 08.06.2023 passed by learned Civil Judge (Senior Division), Darjeeling in Title Suit No. 07 of 2021.

2. The petitioner herein as plaintiff filed an application under order XI rule 12 of the code of the Civil Procedure (CPC) before the court below, with

a prayer for direction upon the defendant to produce building plan as allegedly approved by the Darjeeling Municipality in favour of defendant in respect of his construction over the disputed property. The defendant/opposite party herein filed written objection against the said Application contending that the construction was made by the defendant long back and plaintiff with a *malafide* intention has filed the Application, though the instant case has got no relation with construction of any building. Hence the question of production of approved building plan by the defendant does not arise.

3. Learned court below upon hearing both the parties found that the defendant in her written objection to the injunction Application at paragraph 20 has stated that the construction as alleged by the plaintiff is upon the land of defendants and he further observed whether the same was done on the land of the plaintiff or not, cannot be made out by mere production of the building plan.

4. Before going to further details let me go through the point of controversy between the parties as raised in the suit as well as in connection with the said Application. On perusal of the amended plaint as filed by the petitioner herein in Title suit no. 7 of 2021, it appears that plaintiff in paragraph 25 specifically alleged that he lodged a complain on 02.03.2021 to I/C Sadar Darjeeling stating that the defendant in violation of injunction order raising unauthorized construction and for which he also initiated a contempt proceeding but even after lodging the written complaint on 02.03.2021 and even after filing the Misc. Case for violation of the injunction order, defendant taking advantage of lock down situation

due to Covid-19 pandemic, have deliberately and continuously constructing the unauthorized construction erecting RCC pillars by encroaching the “A” schedule suit land and said unauthorized construction work has been extended upto the top floor from the ground level and thus the defendant has more or less completed the said unauthorized construction illegally.

5. In the prayer portion of the plaint, the plaintiff has also prayed for decree for directing the defendant to dismantle and removal of the unauthorized construction/RCC pillars which are erected over the “A” schedule suit land from its ground level and other construction work existing upto the top floor of the two storied building.

6. Plaintiff has also prayed in the plaint for a declaration that he is the absolute owner of “A” schedule land having absolute right title interest thereon. Defendant/opposite party herein, in para 20 of written objection against plaintiff’s injunction application has stated that the construction, as alleged by the plaintiff is upon the land which is owned and possessed by the defendant

7. It also needs to be mentioned in this context that according to plaint case, the plaintiffs have acquired a piece of land measuring 157 poles situated at schedule mentioned suit property and out of which he transferred a piece of land measuring about 30 poles out of her total 157 poles to the defendant by virtue of registered deed of sale. Said 30 poles of land sold to defendant has been described as schedule “B” to the plaint. It is further alleged in the plaint that in the month of July 2019 plaintiff was temporarily absent from the said property due to medical treatment and taking advantage of the same the defendant had illegally occupied a

portion of 1500 sq.ft. of plaintiff's land and have constructed septic tank in and over said 1500sq.ft., occupied portion of land which has been described in the 'c' schedule to the plaint. All the aforesaid allegations made in the plaint have been denied by the defendant in his written statement.

8. From the aforesaid submissions as made by the parties, it is clear that the main issue of controversy raised in the plaint by the plaintiff is whether the defendant has raised any unauthorized construction encroaching plaintiff's land in A schedule and C Schedule or not and for which whether plaintiff is entitled to get any order of direction to dismantle or removal of the unauthorized construction of RCC Pillar, allegedly erected over the plaintiff's 'A' schedule land and also other construction work which extended upto the existing top floor.

9. Needless to say that the object of incorporating order XI rule 12 in the Code is to elicit admissions from the opposite parties that may obviate the necessity to produce lengthy evidence and expedite disposal. In this context obviously court is to consider that the documents which has been sought for discovery whether can throw light on the subject matter in the suit or not but once it is found that the document sought to be discovered, which may be in possession in the opposite party, if produced may put an end to a protracted enquiry, the court should not refuse to grant such relief. The words "*matters in question*" in Rule 12 of Order XI has been significantly used by the legislature. Therefore, the only requirements under the provision are that the documents should relate to any matter in question and should be in possession of party to suit. If the court in it's

discretion is of the opinion that the said document is required for delivering a fair judgment in the case or for saving cost, such direction may be given. There is no quarrel with the proposition of law that rule 12 of order XI confers very wide discretion, on the court to grant or refuse discovery of documents but while exercising such discretion the Court will have to consider the pleadings of the parties, the nature of the suit, relief claimed and most importantly relevancy of the document for which the discovery is prayed. Accordingly discretion vested upon court has to be exercised after application of mind based on sound judicial principles.

10. As I have already stated above that learned court below while disposed of the said application has based his observation upon certain report submitted by commissioner and the police authority, who stated that the construction which has been made is before passing the injunction order dated 20.02.2021, though learned commissioner in his report stated that when he visited the spot on 20.02.2021, he found some labors were engaged for the construction of boundary wall on the southern side of the plaintiff schedule by the defendant.

11. While court below made the impugned observation, he did not take into consideration that report submitted by commissioner or police may have relevancy in plaintiffs contempt application, but he overlooked the real controversy between the parties i.e. whether defendant had raised construction in terms of any sanctioned plan or not and even if he has raised construction in terms of any sanctioned plan, whether he has raised such construction encroaching plaintiffs land or not. The court below was

confined himself with the defendants affidavit where he stated that the existing building over the defendants property was built in the year 1989.

12. However, fact remains since the object of Order XI rule 12 is to minimize or to put an end to determine an issue, which might otherwise lead to a protracted enquiry, the court below ought to have allowed plaintiffs prayer under order XI rule 12 for direction upon defendant for production of sanctioned building plan, if any, since the core issue involved in the present controversy is firstly whether defendant has encroached plaintiffs land or not and secondly whether construction whatever and whenever raised by defendant on any of the property mentioned in schedule to the plaint is authorized or unauthorized, in other words whether in terms of sanctioned plan or not.

13. In such view of the matter **C.O. 74 of 2023** is allowed. Connected Application Accordingly disposed of.

14. The order no. 55 dated 08.06.2023 passed in T.S. No. 07 of 2021 by learned Civil Judge (Senior Division), Darjeeling is hereby set aside. The defendant is hereby directed to submit sanctioned building plan in terms of plaintiffs prayer made in petition under Order XI Rule 12 C.P.C in respect of his construction on the disputed land, within a period of 3 (three) weeks from the date of communication of this order for inspection by the plaintiff as well as by the court. If the defendant does not have any sanctioned building plan for construction at any point of time, he will answer to such interrogatories accordingly within the said time period. However, if the defendant fails to answer or fails to produce sanctioned building plan in support of his construction, it will be open to the court to draw adverse

inference that either defendant does not have sanctioned building plan or had he produced any such document that would have gone against the defendant who is refusing to produce the same.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(AJOY KUMAR MUKHERJEE, J.)