

18.03.2025
Court No. 06
Item 133 (ML)
Cp

C.O. 1752 of 2024

Sk. Mojammal Hossain & Ors.
Vs.
Sk. Sekender Ali & Ors.

Mr. Sukumar Ghosh
Mr. Sandip Ghosh
Mrs. Moumita Ghosh

.....for the petitioners.

Mr. Arijit Chatterjee
Ms. Susmita Mukherjee

.....for the opposite party nos. 1 to 5.

This application under Article 227 of the Constitution of India is at the instance of the defendant no. 1's series and is directed against an order being No.160 dated February 9, 2024, passed by the learned Civil Judge (Junior Division), Additional Court, Tamluk in Title Suit No. 08 of 2018. By the order impugned, an application under Order 26 Rule 9 of the Code of Civil Procedure stood allowed.

Learned advocate appearing for the petitioners submits that the learned Trial Judge allowed the application for local investigation without appreciating the fact that the endeavour of the opposite parties was only to fish out the evidence by way of local investigation.

Learned advocate appearing for the opposite party nos. 1 to 5, however disputes such submission by submitting that local investigation is necessary for the purpose of deciding the disputes between the parties in the suit.

The opposite party nos. 1 to 5 herein filed a suit praying for declaration to the effect that the plaintiffs have acquired right, title and interest in respect of 'Ka' schedule property by virtue of inheritance, purchase and by way of a deed of 'hebanama' and that the principal defendants have no manner of right, title and interest and possession in respect of the said property and for a declaration that the recording in the RS and LR record of rights is erroneous. A decree for permanent injunction was also prayed for. In such a suit the plaintiffs/opposite parties herein filed an application under Order 26 Rule 9 of the Code of Civil Procedure.

After going through the points of local investigation, this Court finds that the plaintiffs/opposite parties herein sought for local investigation in order to ascertain the nature and character of the suit property, the area of land which is the subject matter of various deeds of transfer and also as to the quantum of land which was transferred by virtue of the deed dated November 7, 1914.

After going through the plaint of the instant suit, this Court finds that the plaintiffs/opposite parties herein are claiming title in respect of the 'Ka' Schedule property and are denying the title of the principal defendants in respect of the said property. Such a dispute as to title as well as possession has to be decided by way of documentary evidence as well as oral evidence and the same cannot be proved by way of the report of a local investigation commissioner. After going through the points of local investigation, this Court is of the considered view that the same was an attempt made by the plaintiffs/opposite parties herein to fish out evidence which is not permissible in law. The learned Trial Judge allowed the application under Order 26 Rule 9 of the Code of Civil Procedure mechanically by observing that there are certain discrepancies between the written objection and the written statement regarding the aspect of identification of the suit plots. The same cannot be the ground for allowing an application for local investigation.

For the reasons as aforesaid, the impugned order calls for interference. The order dated February 9, 2024, passed by the learned Civil Judge (Junior Division), Additional Court, Tamluk in Title Suit No. 08 of 2018, stands set aside.

At this stage, learned advocate appearing for the plaintiffs/opposite parties submits that a direction be

passed upon the learned Trial Judge to dispose of the suit expeditiously.

Considering the fact that the suit is pending from the year 2018, the learned Civil Judge (Junior Division), Additional Court, Tamluk is requested to dispose of the Title Suit No. 08 of 2018 as expeditiously as possible, without granting any unnecessary adjournments to either of the parties.

Accordingly, C.O. 1752 of 2024 stands disposed of. However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, shall be furnished to the applicant at an early date, upon compliance of usual formalities.

(HIRANMAY BHATTACHARYYA, J.)