

Ct. 08.08
No. 29 2025
268
Bd.

C.O. 3794 of 2024

Sri Snehangshu Ghosh
-Versus-
Smt. Moumita Sabui

Mr. Rajdeep Bhattacharya
Mr. Sauradeep Dutta
Mr. Himadree Ghosh ... for the petitioner.

Md. Syed Nurul Arefin
Mr. Rahul Singh
Mr. Syed M. Arefin
Mr. Srijit Roy Chowdhury ...For the Opposite Party

The order dated 16th August, 2024 passed by Learned Civil Judge (Junior Division), 1st Court, Chandernagore, Hooghly, in Title Suit No. 161 of 2016 is under challenge in the present application preferred by the plaintiff/petitioner.

By the impugned order learned court below rejected the plaintiff's prayer for local investigation commission filed under Order XXVI Rule 9 on the ground that if such prayer is allowed it would amount to permit the plaintiff to create evidence and/or to fill up the lacuna of non-portrayal of the "A" schedule land in the L.R.Map.

Being aggrieved by that order, learned counsel appearing on behalf of the petitioner submits that the Court below has acted illegally and with material irregularity by rejecting the application under Order XXVI Rule 9 in as much as the defendant had not filed any written objection against the said application. He further

submits that for adjudication of the real controversy between the parties such local investigation commission is badly needed.

Md. Arefin, learned counsel appearing on behalf of the opposite party supporting the order impugned submits that the court below was of clear view that the identification and physical existence of the “A” schedule property has not been established as there is no existence of the schedule ‘A’ property in the L.R.Map, though plaintiff claimed that his name has been recorded in the LR record of rights. The court below further held that Court cannot permit the plaintiff to create evidence by allowing the local investigation commission.

Learned counsel for defendants further submits that the defendant/opposite party herein raised verbal objection against the said application before the Court below. Order impugned is quite justified in view of the fact that the objection for local investigation commission cannot be allowed to fish out evidence and as such order impugned does not call for interference by this Court.

On perusal of the copy of plaint it appears that in Title Suit No. 161 of 2016, the plaintiff claimed that he acquired “A” schedule suit property by way of registered deed of gift executed by his mother comprising two satak of land in

plot no. 460 corresponding to LR Plot no. 483. His further contention in the plaint is that “B” schedule property is situated adjacent western side of “A” schedule property and to curtail the pre-emption right of the plaintiff, over “B” schedule property, the defendant is trying to excavate land from the plaintiff’s “A” schedule property and thereby trying to diminish the demarcation line between “A” and “B” schedule property.

Petitioner’s further contention herein is that during pendency of the pre-emption Misc. Case, if the defendant succeeds in amalgamating “A” and “B” schedule property, the plaintiff will certainly loss the pre-emptive right as the plaintiff filed the pre-emption case being Pre-emption Case no. 24 of 2010, as co-sharer as well as adjoining land owner with longest common boundary and for that reason the right title and interest of the plaintiff has been clouded, though the defendant has no iota of right title or interest in the “A” schedule property. He also contended that it further appears from the copy of the deed of gift being No. 2068 dated 26th September, 2023 that plaintiff’s mother gifted the property mentioned in the schedule to the gift which is two satak out of six satak of land being LR plot no. 483.

I have considered the respective submissions.

In the application under Order XXVI Rule

9, the plaintiff has made specific averments that during pendency of the suit, defendant installed iron pillars surrounding the “A” schedule property and thereby trying to encroach the land of the plaintiff.

Learned trial court while rejected the petitioner’s application for local investigation commission observed that plaintiff ought to have conversant with the boundary of “A” schedule property otherwise he could not have ascertained that the defendant is trying to encroach upon the boundary of the “A” schedule property and that if the prayer for local investigation is allowed, it will amount to create evidence in favour of the plaintiff and it will give an opportunity to the plaintiff to fill up the lacuna of non-portrayal of the “A” schedule L.R. Map. However, the real dispute between the parties is over the extent of land of the plaintiff, which is marked as “A” schedule property.

Accordingly, where there is dispute as regards identity of suit property, the court below should have allowed local investigation commission. When plaintiff specifically alleged that defendant installed iron pillar surrounding “A” schedule property and thereby trying to disturb the local features which might hinder the localisation of the site with reference to it’s title deeds, plaintiff’s prayer should have been considered favourably, since “local investigation”

under the provision includes “localization with reference to the documents of title”.

In the instant case plaintiff/petitioner during argument clearly indicated that without proper investigation, it could not be deciphered whether defendant/opposite party excavating land from plaintiffs “A” schedule or not. Therefore, since the dispute relates to the identity of the property and/or the boundary dispute and also whether defendant excavating land from plaintiff property or trying to diminish boundary line of ‘A’ schedule by putting iron pillar or not, the investigation is necessary.

The language of order XXVI rule 9 is wide enough in as much as a local investigation may be directed by court “*for elucidating any matter in dispute*” and the word “*elucidating*” speaks for making something more cleaner by explaining it more fully. It is on record that the dispute between the parties pertains to the allegation of making attempt to encroach ‘A’ schedule land by excavation of soil or by fixing iron pillar surrounding ‘A’ schedule, therefore it is expedient for the ends of justice to appoint a local investigation commissioner to measure each site belongs to plaintiff and defendant with their respective registered deeds and to note down the local features with the assistance of local investigation commissioner.

In such view of the matter, I find that the order passed by the trial court that if the prayer for local investigation is allowed it would create evidence in favour of the plaintiff or it will give an opportunity to fill up the lacunae of plaintiff of non-portrayal of the 'A' schedule property in LR map are perverse and is liable to be set aside.

In such view of the matter, the impugned order dated 16.08. 2024 passed in Title Suit No. 161 of 2016 by learned Civil Judge (Junior Division), 1st Court, Chandernagore, Hooghly is hereby set aside.

Trial court is directed to appoint a survey commissioner within a period of thirty days from the date of communication of this order, who will conduct local investigation commission in terms of points for local investigation commission mentioned in the petition after relaying deeds of the parties and will submit report within a reasonable period. The cost of the investigation commissioner will be borne by the plaintiff.

C.O. 3794 of 2024 stands disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on compliance of requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)