

March 7, 2025
Sl. No.40
Court No.6
s.biswas

CO 4447 of 2024

Tarak Ghosh and others

vs.

Krishnapada Ghosh @ Amal Krishna Ghosh and another

Mr. Partha Pratim Roy

Mr. Chiranjib Sinha

... for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated 12th September, 2024 passed by the learned Civil Judge (Junior Division) at Bangaon in Title Suit No.221 of 2023.

By the order impugned, the application under Order 39 Rule 7 of the Code of Civil Procedure stood rejected. Mr. Roy, learned advocate for the petitioners submits that the predecessor in interest of the petitioners purchased demarcated portion of the property measuring 15.5 decimals out of 22 decimals in L.R. Dag No.3849 within mouza Shimulpur under police station Gaighata in the district of North 24 Parganas.

Mr. Roy submits that in order to bring the real picture of the property before the court with regard to the fact that the petitioners herein are in possession of the specific demarcated portion of L.R. Dag No.3849, local inspection on the points mentioned in the schedule of the application under

Order 39 Rule 7 of the Code of Civil Procedure is necessary.

Mr. Roy further submits that such local inspection is necessary to prove the case of the petitioners that demarcation of L.R. Dag No.3849 was acted upon by the parties.

In course of hearing of this revisional application, Mr. Roy took this court extensively through the statements contained in the plaint and the written statement.

Having gone through the averments made in the plaint, this court finds that the predecessor in interest of the petitioners, namely, Mather Chandra Ghosh is claiming title by virtue of a registered deed of sale bearing No.2369 dated 17.03.1967. The petitioners claim that by virtue of the said sale deed, the possession of the property with specific demarcation was handed over to the predecessor in interest of the plaintiffs. Subsequently, the predecessor in interest of the plaintiffs, namely, Mather Chandra Ghosh while in exclusive possession of the suit property constructed mud made dwelling house and subsequently constructed pucca building and also raised boundary in the southern side, eastern side and western side of the suit property and planted beetle nut trees and

coconut trees in the northern portion of the property of the plaintiff in Dag No.3848.

It is the further case of the plaintiff that the legal heirs of Mather Chandra Ghosh while in ejmal possession called a surveyor and after measuring the suit property along with other properties, a site plan was drawn on 26th May, 2013 by amin and the plaintiffs have settled their previous possession in accordance with the site plan drawn.

The defendants/opposite parties herein have specifically denied the fact that the suit plot was partitioned between co-sharers of the suit plot. It was specifically stated therein that Upendranath Ghosh and others never transferred 15.5 decimals of land in the suit plot as stated by the plaintiffs in favour of Mather Chandra Ghosh and the said Mather Chandra Ghosh was never handed over possession with specific demarcation.

After going through the pleadings of the respective parties, this court is of the prima facie view that the entire dispute is whether the predecessor in interest of the petitioners namely Mather Chandra Ghosh was handed over the possession of a portion of L.R. Dag No.3849 with specific demarcation or not.

It is the case of the plaintiffs that such demarcated portion was handed over to Mather

Chandra Ghosh as per the demarcation in a deed of 1967. If that be so, the question as to whether the predecessor in interest of the plaintiffs got a specific demarcated portion of the suit property is to be proved either by documentary or oral evidence and local inspection for such purpose is not necessary. The local inspection as prayed for by the petitioners, in the facts of the case, is an attempt to fish out evidence which is impermissible. This court is, therefore, of the considered view that the learned trial judge was right in rejecting the application for local inspection.

With the above observation and direction, CO 4447 of 2024 stands dismissed. There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)