

Civil Revision

**Present:** The Hon'ble Justice Jyotirmay Bhattacharya

Judgment on 27.08.2010

C.O. No. 206 of 2005

With

C.A.N. No. 5580 of 2009

*BRAJESH SINGH @ BRAJESH KUMAR SINGH.*

*VERSUS*

*MANARANJAN CHAKRABORTY & ANR.*

Points:

**Local investigation-**Defendant denied title of the plaintiff but did not raise dispute that the suit property is not identifiable- Local investigation whether necessary-Code of Civil Procedure, 1908 O 26 R 10

Facts:

The plaintiff/opposite party filed a suit for declaration of his right, title and interest in respect of 'Ka' schedule property and for injunction for restraining the defendant from disturbing his peaceful possession in the suit property. A decree for recovery of possession of the 'Kha' schedule property from the defendant has also been sought for. The defendant is contesting the said suit by filing the written statement denying the plaintiff's title in the suit property. The defendant stated that the predecessor-in-interest of the plaintiff's vendor himself admitted that one Subarna Sundary was the owner of the suit property. It was however stated by him that since Subarna Sundary left no heir behind her, her interest in the suit property will devolve upon the State by Eschate and as such the State of West Bengal is a necessary party in the suit. The defendant stated that since the suit property

was lying vacant, the defendant occupied the same and started carrying on business therein. In such a suit the defendant filed an application for local investigation for appointment of survey passed Advocate Commission for holding an investigation

Held:

There is no dispute regarding the identity of the suit property. The suit property is well defined by boundaries in the schedule of the plaint. The defendant also did not claim in his written statement that the suit property is not identifiable. When the defendant claims in the written statement that the plaintiff did not acquire any title in the suit property by virtue of his purchase from his vendors as his vendors had no title in the suit property, it goes without saying that the defendants were very much aware about the identity of the suit property. No dispute regarding boundary of the suit property has also been raised by the defendants in the said suit. Since the parties are participating in the trial of suit by making this definite claims concerning the suit property, identification of the suit property by investigation is not necessary. That apart the dispute regarding title of the plaintiff's vendor which was raised by the defendant in their written statement can very well be established by documentary evidence in course of trial of the suit.

Para 7

For the Petitioner : Mr. Jiban Ratan Chatterjee, Mr. Partha Pratim Roy

**The Court:**

By the impugned order being No. 35 dated 20th April, 2004 passed by the learned Civil Judge (Junior Division) First Court at Bankura in Title Suit No. 113 of 2001, the defendant's application for local investigation was

rejected by the learned Trial Judge. The defendant is aggrieved by the said order. Hence the defendant has come before this Court with this application under Article 227 of the Constitution of India.

2. Heard Mr. Chatterjee, learned Senior Counsel, appearing for the petitioner. None appeared on behalf of the defendant/opposite party to oppose this application at the time when it was taken up for hearing.

3. Let me now consider as to how far the learned Trial Judge was justified in passing the impugned order in the facts of the instant case. The plaintiff/opposite party filed a suit for declaration of his right, title and interest in respect of 'Ka' schedule property and for injunction for restraining the defendant from disturbing his peaceful possession in the suit property. A decree for recovery of possession of the 'Kha' schedule property from the defendant, has also been sought for by the plaintiff in the said suit.

4. It was stated in the plaint that the plaintiff purchased the 'Ka' schedule property from the erstwhile owners thereof for his own use and occupation. Subsequently the plaintiff constructed a temporary room on 'Kha' schedule property which is a part of the 'Ka' schedule property. It was further stated therein that since the defendant No.1 helped the plaintiff at the time of purchase of the suit property from the erstwhile owners thereof, a cordial relationship grew up between them. Subsequently on the request of the defendant No.1 the plaintiff permitted the said defendant to carry on his business as grocery shop in the said temporary construction lying at the 'Kha' schedule property which is a part of the 'Ka' schedule property. Since subsequently the defendant refused to vacate the 'Kha' schedule property even after revocation of such permission, the instant suit was filed claiming the aforesaid reliefs.

5. The defendant is contesting the said suit by filing the written statement denying the plaintiff's title in the suit property. It was stated by the defendant that the persons from whom the plaintiff purchased the suit property were not the owners of the suit property and as such the plaintiff did not acquire any title therein by such purchase. The defendant further stated that when Radhika Prosad, the predecessor-in-interest of the plaintiff's vendor, himself admitted that one Subarna Sundary was the owner of the suit property, the plaintiff cannot acquire any title on the strength of his purchase from his vendors who traced out their title through the said Radhika Prosad Bandhopadhyay and others. It was however stated by him that since Subarna Sundary left no heir behind her, her interest in the suit property will devolve upon the State by Eschate and as such the State of West Bengal is a necessary party in the suit. The defendant denied the grant of licence in respect of the 'Kha' schedule property by the plaintiff in his favour for carry on business therein without any licence fees. On the contrary, the defendant stated that since the suit property was lying vacant, the defendant occupied the same and started carrying on business therein. The defendant thus prayed for dismissal of the suit. In such a suit the defendant filed an application for local investigation for appointment of survey passed Advocate Commission for holding an investigation to ascertain the following points :

- i) To ascertain the allottee in whose favour the suit plot was allotted in the partition deed dated 12<sup>th</sup> September, 1935 by relaying the same with the map.
- ii) To ascertain the allotment which was given to Subarna Sundari Dashi with reference to various sale deeds executed by Radhika Prosad for transferring his land to different purchasers and to find

out as to whether the suit plot fell in the allotment of Radhika Prosad or not.

iii) To demarcate the 'Ka' and 'Kha' schedule properties and to find out as to whether any construction exists either on 'Ka' or on 'Kha' schedule property.

iv) To prepare a sketch map of the suit property.

v) Local features.

6. The learned Trial Judge rejected the defendant's said application for investigation by holding that such investigation is not at all necessary for deciding the issue relating to title of the plaintiff over the suit property. The learned Trial Judge further held that since the suit property had already been inspected by an Advocate Commission, no further investigation is necessary. Accordingly, the defendant's prayer for investigation was rejected. The propriety of such findings of the learned Trial Judge is under consideration before this Court.

7. On perusal the pleadings of the parties, this Court finds that there is no dispute regarding the identity of the suit property. The suit property is well defined by boundaries in the schedule of the plaint. The defendant also did not claim in his written statement that the suit property is not identifiable. When the defendant claims in the written statement that the plaintiff did not acquire any title in the suit property by virtue of his purchase from his vendors as his vendors had no title in the suit property, it goes without saying that the defendants were very much aware about the identity of the suit property. No dispute regarding boundary of the suit property has also been raised by the defendants in the said suit. Since the parties are participating in the trial of suit by making this definite claims concerning the suit property, identification of the suit property by investigation is not

necessary. That apart the dispute regarding title of the plaintiff's vendor which was raised by the defendant in their written statement can very well be established by documentary evidence in course of trial of the suit.

8. As such this Court does not find any illegality in the impugned order by which the defendants' prayer for investigation was refused by the learned Trial Judge. The revisional application deserves no merit for consideration. The revisional application thus stands rejected.

**Re: CAN No. 5580 of 2009**

9. In view of the disposal of the revisional application in the manner as aforesaid no further order need be passed on the petitioner's application for fresh interim order being CAN No. 5580 of 2009.

10. The said application is thus treated as disposed of.

11. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

(Jyotirmay Bhattacharya, J.)

