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Calcutta High Court

Case No: CO. No. 1249 of 2011

Sova Rani Bhakat and Others	APPELLANT
Vs	
Smt. Sefali Chakraborty and Others	RESPONDENT

Date of Decision: Dec. 16, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 26 Rule 10(2)

Citation: (2012) 2 CALLT 27

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Asit Bhattacharya, Mr. Subrata Ghosh, Mr. Somenath Gangopadhyay, for the Appellant; Mahendra Prosad Gupta for the Opposite Parties, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.
This application is directed against the Order No. 37 dated January 27, 2011 passed by the learned Civil Judge (Junior Division). 2nd Court, Chandannagore in Title Suit No. 33 of 1985 thereby rejecting an objection filed by the defendants against the report submitted by the learned Commissioner on investigation. The predecessor-in-interest of the plaintiffs/opposite parties herein instituted a suit being Title Suit No. 33 of 1985 praying for recovery of possession by evicting the original defendants, mandatory injunction and other reliefs. The original plaintiff filed an application for appointment of a survey passed advocate for local investigation for ascertainment of the location of the plaintiff"s land and the thatched room of the defendant. That application was allowed and a Survey passed Pleader Commissioner was appointed to investigate the land in suit on the points mentioned in the application. The learned Commissioner so appointed in the suit investigated the land in suit and submitted his report accordingly. Thereafter, the defendants/petitioners herein filed an objection against the report of the learned

Commissioner and that objection was rejected by the impugned order. Being aggrieved, this application has been preferred by the defendants.

2. Now, the question is whether the impugned order should be sustained.

3. Upon hearing the learned counsel for the parties and on going through the materials on record, I find that the learned Commissioner was directed to survey on four points appearing in the report of the learned Commissioner and these points are mentioned below:-

1) To survey and relay the dag No. 914 of Mauza "Bhala" and also to locate the Ka and Kha schedule properties.

2) To show the relative position of the thatched room of the defendant in the suit property after drawing a case map.

3) To measure the dag No. 914 in a suitable scale and to show the location of the purchased land of the plaintiff in the Ka schedule property and also to show the position of the thatched room of the defendant in the Kha schedule property.

4) To note the local features in which the attention might be drawn to the commissioner by the parties or their advocates at the time of executing the writ of commission.

4. The learned Commissioner has stated in his report that the investigation work was done by him in presence of both the parties, their respective lawyers, clerks, their men and many villagers. There is no dispute about it. So, the fact remains that the learned Commissioner investigated the plot No. 914 only on the points mentioned above in presence of both the parties to the suit.

5. The learned Commissioner was examined in details and he has described how he surveyed and relayed the said land in suit bearing No. 914.

6. It is not in dispute that the plot No. 914 is a big plot and many persons are residing thereon. The learned Commissioner has also stated in his deposition that he did not survey the lands of the other persons who are not parties to the suit.

7. Mr. Asit Bhattacharya appearing on behalf of the petitioners has contended that the report submitted by the learned Commissioner is not proper because of the fact that the learned Commissioner did not examine all the persons residing on the land in suit. Even he did not examine the plot owners of the adjacent land. Therefore, the report cannot be accepted. He has contended that under the said circumstances, the survey and relayment of the land in suit is not proper at all. The result is that the learned Commissioner has failed to ascertain the location of the land in suit. He has also contended that the corresponding C.S. & R.S. maps in respect of the land in suit have not been considered and the report is silent in this regard and as such, the report should be

rejected. Since, the adjacent lands have not been surveyed, the fixed point as taken by the learned Commissioner, cannot be accepted. He has also contended that the scientific method which is to be adopted in surveying and relaying the land in suit, has not been adopted and so, the report should be rejected. Thus, he has concluded that the learned Trial Judge has failed to appreciate these matters in the impugned order and as such, the report is liable to be rejected. So the impugned order cannot sustain.

8. On the other hand, Mr. Mahendra Prosad Gupta appearing for the opposite parties has supported the impugned order and submitted that the survey and relayment of the land in suit had been done by the learned Commissioner in accordance with law and scientific method had been adopted. The learned Commissioner, in his report, has clarified how he had proceeded to locate the suit properties after ascertaining the fixed points. So, the learned Trial Judge is justified in rejecting the objection filed by the petitioners.

9. As per materials on record, I find that the learned Commissioner was required to survey and relay the dag No. 914 of Mouja Bhatagram under P.S. Tarakeshwar, District Hooghly. The learned Commissioner was also directed to locate the Ka and Kha schedule property as mentioned in the schedule of the plaint. During examination, the learned Commissioner has stated that he did not mention the area of the entire plot No. 914 in his report but he has stated specifically that the plot No. 914 being a big plot, he had no occasion to examine the persons other than the parties to the suit, occupying in other portions of the land in suit. But, he has clearly stated that the plot No. 929 was taken by him as fixed plot and this, plot No. 929 is to the adjacent west of the plot No. 914. This was done in presence of both the parties. Since, the plot No. 914 was a big plot, it is not possible for the learned Commissioner to state the length and breadth of the said plot without the help of the scale at the time of his deposition. But, he has stated specifically that Ka schedule property is apart of the plot No. 914 and in coming to this conclusion he has surveyed and relayed the deed of the plaintiff at the time of holding the work of the commission. Since, there are other occupiers of the plot No. 914 and they are not impleaded as parties to the suit, he did not serve any notice upon the persons who are occupiers of the other portions of the plot No. 914. This does not mean that the commissioner did not survey the entire plot in suit. The fixed points had been adopted by the commissioner in presence of both the parties to the suit and there is no indication in the report that any objection was raised by the defendant in taking the plot No. 929 as fixed points. He has mentioned in his report in details he had adopted pucca old buildings situated on the contiguous west an south of the plot No. 914, i.e., upon the plot No. 929 as fixed points in absence of any trijunction pillar in the locality. These buildings had also been shown in the R.S. map. He had also verified the old buildings situated on plot Nos. 919 & 917 which tollyed with the settlement map. He has denied the suggestion that he did not verify the length and breadth of the purchased land of the plaintiffs and I find that the deed of sale itself lays down the length and breadth of the purchased land of the plaintiffs out of the plot No. 914. This being the position, I am of the view that there is no difficulty in the ascertainment of the suit property out of the entire plot No. 914. The fixed

points had been properly determined by him.

10. The learned Commissioner has described the properties, schedule "ka" and "kha" properties as described in the schedule of the plaint in his report by different colours such as yellow and prange respectively, with the sketch map of the same. Therefore, it cannot be stated that the learned Commissioner had failed to locate the suit property. Rather, the report lays down that the plaintiff and his brothers possess the dwelling house adjacent to the eastern side of the ka dwelling house. So, such statement of the learned Commissioner indicates that the learned Commissioner had identified the suit were not surveyed by him. In fact, there is no direction to survey of the adjacent plots in the writ of Commission.

11. Mr. Bhattacharya appearing on behalf of the petitioners has referred to the decision of Union of India & Anr. v. M/s. Kripal Industries reported in AIR 1998 Rajasthan 224 and thus, he submits that when there is a dispute over possession, a Commissioner should not be appointed to survey the suit land. With due respect to Mr. Bhattacharya. I am of the view that this will not be applicable at this stage inasmuch as the commissioner was appointed long time back and he had already submitted his report and at present I am concerned whether the report should be accepted or not. Similarly, Mr. Bhattacharya has also referred to the decision of Cooch Behar Kshatriya Society & Anr. v. Raj Kumar Thakur & Ors., reported in (2011)2 ICC 776 and Sk. Sqjid Hossain v. M/s. General Industries Corporation & Ors., reported in (2011)2 ICC 762 and thus, he submits that since the sale deed lays down the length and breadth of the ka schedule property, the land in suit could be identified easily and in that case local investigation is not necessary at all. The decision of Cooch Behar Kshatriya Society (supra), I hold, is not applicable in the instant situation because of the same reason as discussed in the case of Union of India & Anr. [supra). The Commissioner has submitted his report. So, the question of the need for local investigation will not be a matter of consideration in this revisional application. Similarly, the decision of Sk. Sajid Hossain [supra) is not applicable in the instant case inasmuch as the same decision relates local inspection.

12. Mr. Mahendra Prosad Gupta appearing on behalf of the opposite parties has referred to the decision Subhaga and Others Vs. Shobha and Others, and has submitted before me that in order to identify the suit property it is not necessary to survey of adjacent lands to find out whether an encroachment had been made in the property concerned. A property can be identified either by boundaries or by any other specific description. The Commissioner having identified the suit property by boundaries after relayment of the adjacent plot Nos. 919, 917, 929, at present, I am concerned whether the learned Commissioner has given enough reasons in support of his report for its acceptance. Since, the reasons have been assigned in support of the report, I am of the view that the report could well be accepted in view of the decision of Subhaga & Ors. (supra).

13. Mr. Gupta has also referred to the decision of Rajinder and Co. Vs. Union of India (UOI) and Others, and thus, he has submitted that the question whether the

Commissioner''s report is finally acceptable or not would be decided by the court dehors the order passed by the authority concerned. In view of this innocuous position it was not necessary for the High Court to alter trial court''s order. It would be open to the parties to substantiate their respective contentions before the trial court regarding tenability or untenability of the Commissioner''s report and its conclusions.

14. Mr. Gupta has also submitted that according to the provisions of Order 26 Rule 10(2) of the CPC, the report of the Commissioner and the evidence taken by him (i.e. Commissioner) shall be the evidence in the suit and shall form part of the record. Therefore, the report of the Commissioner and the evidence taken by him shall be, considered by the learned Trial Judge at the time of disposal of the suit along with the other evidence adduced by the parties or to be adduced by the parties.

15. Since, the learned Commissioner has answered all the points of investigation in his report and the learned Commissioner has given reasons in support of his report and also at the time of deposition, in consideration of the decision of Subhaga & Ors. (supra) and Rajinder & Co. (supra), I am of the view that the said report cannot be rejected and that further investigation is not at all necessary.

16. Above all, the evidentiary value of the report has been clearly indicated in Order 26 Rule 10(2) of the CPC as discussed earlier.

17. In that view of the matter, I am of the opinion that there is no scope of interference with the impugned order. The learned Trial Judge has rightly rejected the objection raised by the defendants/petitioners herein. The impugned order should be sustained.

18. The application is devoid of merits and is, therefore, dismissed. Considering the circumstances, there will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.