

(2013) 08 CAL CK 0070**Calcutta High Court****Case No:** C.O. No. 4293 of 2012

Sri Vijay Kumar Swaika

APPELLANT

Vs

Sri Vineet Kumar Swaika

RESPONDENT

Date of Decision: Aug. 22, 2013**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 151

Hon'ble Judges: Prasenjit Mandal, J**Bench:** Single Bench**Advocate:** J.R. Chatterjee, Mr. Hiranmoy Bhattacharya, Mr. Bidyut Dutta and Mr. Bijan Dutta, for the Appellant; Jahar Chakraborty and Mrs. Sabita Mukherjee, for the Respondent**Final Decision:** Dismissed**Judgement**

Prasenjit Mandal, J.

This application is at the instance of the plaintiff and is directed against the Order No. 99 dated May 24, 2012 passed by the learned Judge, 6th Bench, City Civil Court at Calcutta in Title Suit No. 976 of 2006 thereby rejecting the prayer of the plaintiff for further commission by a survey passed civil engineer. The aforesaid title suit has been filed by the father for declaration of title, permanent injunction and other reliefs against his son in respect of the suit property described in the schedule to the plaint. The father has contended that the suit property originally belonged to Smt. Gyanwati Devi Swaika, adoptive mother of the plaintiff. She was the owner of the entire property at 25B Shakespeare Sarani, Kolkata-700017, being a six storied building compromised several flats. She gifted two flats being flat nos. 5 & 6 on the 4th floor of the said premises with two garages and two servants' rooms to the northern side of the premises in favour of the son of the plaintiff, i.e., the defendant in 1971. The son was then a minor and the gift was accepted by the father on behalf of his son.

2. Smt. Gyanwati Devi Swaika died and after her death according to plaint case, the plaintiff inherited the rest property. A local inspection was held over the suit property in the year 2006 and he submitted a report. Thereafter, the plaintiff filed an application for local inspection by a civil engineer on the points as noted in the application u/s 151 of the C.P.C. appearing at Page No. 46. The relevant points for local inspection by a civil engineer have been described at Page No. 48 of the application. That application was rejected by the impugned order. Being aggrieved, the father has filed this application.

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

4. Having heard the learned Advocates of both the sides and on perusal of the materials on record, I am of the view that though the learned Trial Judge did not discuss elaborately in support of his conclusion, he has rightly rejected the application for holding further commission.

5. As noted above, in a suit for declaration of title and permanent injunction, a commission was held at the locale and the Commissioner submitted his report on September 2, 2006. Since then the petitioner did not take any steps, but, he filed several applications and the prayer for further commission by a survey passed civil engineer is one of them.

6. Mr. J.R. Chatterjee, learned Senior Advocate appearing for the petitioner has drawn my attention on the two points for local inspection appearing at Page No. 48. Thus, he has submitted that the inspection on these two points has no connection with the report submitted by the lawyer Commissioner and the learned Trial Judge did not apply his judicial mind in rejecting the prayer for holding further commission.

7. So far as the points for inspection by a civil engineer is concerned. I find that the father has wanted to bring a picture if the premises in question is divided into two separate and distinct blocks, Northern Block & Southern Block, to note whether the two blocks are self-sufficient, to note whether the ground and the 1st floor of the building in question are separated from other floors, whether the occupiers of the second floor upwards have any access from the premises to reach the Southern driveway/passage by car from the northern driveway, etc.

8. In consideration of the relief as sought for and the report submitted by the Commissioner earlier, appearing as Annexure-B at Page No. 19 of the application, in my view that the learned Trial Judge has rightly rejected the prayer for holding a commission by a survey passed civil engineer. This is nothing, but a step to prolong the litigation for an unending period. This will appear from the conduct of the plaintiff being the father of the defendant. He filed an application for temporary injunction. The learned Trial Judge granted the ad interim injunction of status quo, but on contested hearing, the application was rejected with costs of Rs. 500/- to the defendant. The father has preferred an appeal being F.M.A.T. No. 3863 of 2006

before this Hon'ble Court and the said appeal was also dismissed. Then he filed a review and the said review being R.V.W. No. 4874 of 2006 was also dismissed holding that the application for review is devoid of any substance. The application for review was dismissed with costs. The father had been directed to pay costs of 15gms.

9. From materials on record, it reveals that the plaintiff has filed several other applications which are yet to be disposed of. Thus, from the conduct of the plaintiff it is clear that such recourses have been adopted only to prolong the litigation for the reasons best known to him. The application for commission has no merit at all in consideration of the reliefs sought for in the said suit. The learned Trial Judge has, therefore, rightly rejected the application. There is no scope of interference.

10. However, in consideration of the situation in order to carve the unnecessary application, I am of the view that adequate costs should be awarded in favour of the defendant.

11. I think that a sum of costs of Rs. 5,000/- in favour of the defendant would justify the situation.

12. Accordingly, in my view, the impugned order does not suffer from illegality or material irregularity.

13. So, the impugned order should be sustained.

14. The said application is, therefore, dismissed.

15. The petitioner is directed to pay a sum of Rs. 5,000/- only to the defendant/opposite party herein as costs within 30 days from date without fail in default the learned Trial Judge shall pass appropriate orders for realization of the costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.