

(2011) 06 CAL CK 0044
In the Calcutta High Court
Case No : C.O. No. 1271 of 2008

Biswanath Mondal and Others

APPELLANT

Vs

Smt. Mayarani Pal and Others

RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2011) 06 CAL CK 0044

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Anit Kr. Rakshit, for the Appellant; Nilima Das, for Opposite party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the Plaintiffs and is directed against the judgment dated January 9, 2008 passed by the learned Civil Judge (Senior Division), Additional Court in Misc. Appeal No. 71 of 2006 thereby reversing the order No. 149 dated July 4, 2006 passed by the learned Civil Judge (Junior Division), 2nd Court, Hooghly in Title Suit No. 161 of 1990.

2. The short fact is that the Petitioners instituted a suit being Title Suit No. 161 of 1990 for declaration of title, permanent injunction and other relief's against the opposite parties before the learned Civil Judge (Junior Division), Hooghly. The Defendants/opposite parties are contesting the said suit by filing a written statement denying the material allegations raised in the plaint and they have contended that their predecessor-in interest got the property by way of permissive possession and the R.S. record had been recorded in his name by permissive possession accordingly. The Petitioners filed an application for local investigation and the opposite parties raised objection against that application. The application for local investigation was rejected. Subsequently, the Petitioners filed an application for review under Order 47 Rule 1 of the CPC and that review application was allowed. The learned Commissioner was directed to investigate

the suit properties accordingly. Thereafter, he submitted a report. The Defendants/opposite parties filed an application challenging that order. That application was rejected. The opposite parties filed a misc. appeal being Misc. Appeal No. 71 of 2006 before the learned District Judge, Hooghly. Thereafter, the said misc. appeal was transferred to the Court of the learned Civil Judge (Senior Division), Additional Court, Hooghly. By the judgment dated January 9, 2008 the learned Civil Judge (Senior Division), Additional Court allowed the said misc. appeal. Being aggrieved, this application has been preferred.

3. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the application for local investigation filed by the Petitioners was allowed on an application for review filed by the Plaintiffs/Petitioners herein. Accordingly, the Advocate/Commissioner was appointed by the learned Trial Court to investigate the suit properties as per writ issued to him and ultimately, the learned Commissioner submitted his report. From the materials placed in the application, I find that when the learned Commissioner started his work for investigation both the parties participated in the investigation proceedings. This being the position, I am of the view that there is no scope of challenging of the impugned order.

4. The suit properties comprise two plots, namely, 944 and Bata Plot No. 944/1210. The opposite parties contended that the Defendant was allowed to reside in respect of the plot No. 944 and the question involved in the matter in dispute is whether there is a passage in respect of the Schedule "C" property. Since, the record of rights is silent, the appointment of a Survey Commissioner, I think, was justified to determine the matter in issue and, in fact, the Defendant participated in the process of investigation held by the learned Commissioner.

5. Therefore, I do not find any justified ground to interfere with the impugned order. The report of the Commissioner shall be the evidence of the suit and it shall form a part of the record.

6. The revisional application, therefore, fails to succeed. It is, therefore, dismissed.

7. Considering the circumstances, there will be no order as to costs.

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