
(2013) 11 CAL CK 0002
In the Calcutta High Court
Case No : C.O. No. 3006 of 2013

Smt. Subasini Sahoo

APPELLANT

Vs

Balisai No. 7 Gram Panchayat and Others

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2013) 11 CAL CK 0002

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Hiranmoy Bhattacharya and Mr. S. Bhattacharya, for the Appellant;
Saptangshu Basu and Mr. Jayanta Kr. Das, for the Respondent

Final Decision : Disposed Off

Judgement

Prasenjit Mandal, J.—This application is at the instance of the plaintiff and is directed against the Order No. 126 dated July 1, 2013 passed by the learned Civil Judge (Junior Division), 2nd Additional Court, Contai in Title Suit No. 58 of 2013 thereby allowing an application under Order 26 Rule 10(3) of the C.P.C. dated July 12, 2010. The plaintiff/petitioner herein instituted the aforesaid suit against the defendants for declaration of title, permanent injunction and other reliefs. The defendants/opposite parties are contesting the said suit and in that suit the plaintiff filed an application for local investigation and that application was allowed by the learned Trial Judge on an earlier occasion. But, the report filed by the learned Commissioner was not accepted by the learned Trial Judge after recording his statement and the matter came before this Hon''ble Court. By an order dated March 29, 2010 passed in C.O. No. 2389 of 2009 this Hon''ble Court directed that the learned Trial Judge if not satisfied with the report, may direct further enquiry as per Order 26 Rule 10(3) of the C.P.C.

2. The matter came before this Hon''ble Court again for the second time and by an order dated June 24, 2011 in C.O. No. 1886 of 2011, this Hon''ble Court directed the learned Trial Judge to hear out the application under Order 26 Rule 10(3) of the C.P.C. filed by the defendant No. 2 again and then by the impugned

order the learned Trial Judge allowed the said application. Being aggrieved, this application has been preferred.

3. Having heard the learned Counsel for the parties and on going through the materials on record, I find that the matter of local investigation was initiated at the instance of the plaintiff/petitioner herein on four points and accordingly, the learned Commissioner submitted his report. Being not satisfied with the said report, the learned Trial Judge rejected the report and ultimately, the defendant No. 2 filed another application under Order 26 Rule 10(3) of the C.P.C. for holding fresh local investigation on seven points and as per direction of the learned Judge of this Hon'ble Court in C.O. No. 1886 of 2011, the matter was heard by the learned Trial Judge and the said application under Order 26 Rule 10(3) of the C.P.C. was allowed.

4. What I find is that since the matter originated from an application on behalf of the plaintiff on four points only, if there is any defect in the report, appropriate steps should have been taken by the learned Trial Judge in respect of four points only as prayed for in the original application under Order 26 Rule 9 of the C.P.C. and not beyond that. At the time of disposing of the first application, the defendant No. 2 did not raise any contention that the investigation should also be done on other points as noted in his application under Order 26 Rule 10(3) of the C.P.C. dated July 12, 2010.

5. Accordingly, in my view, the learned Trial Judge is not justified in allowing the application under Order 26 Rule 10(3) of the C.P.C. which is beyond scope of the application under Order 26 Rule 9 of the C.P.C. So, the said application stands dismissed.

6. However, the petitioner is at liberty to pray for further enquiry if the report of the learned Commissioner does not correspond to the points noted in the writ already issued to the Commissioner. Such exercise must be done within 30 days from the date of communication of the order without fail. If no application is filed, the matter shall be treated as closed chapter.

7. The application is disposed of to the extent indicated above.

8. 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.