

TS 595/2022
CNR No.WBJP04-000-702-2022

Order no.26
Dated : 21.02.2024

Today is fixed for hearing of the application under Order XXVI Rule 9 of CPC.

Ld. Advocate on behalf of both the parties files hazira.

Heard both the parties at length.

The record is taken up for passing necessary order.

The Ld. Advocate for the plaintiff submitted before this court that appointment of a Survey Passed Commissioner is necessary for inspection upon the suit property. Hence, the instant application has been filed by him.

Ld. Advocate for the defendant filed written objection and submitted before this Court that prior to the institution of the instant suit, an enquiry was conducted upon the scheduled property by the BL& LRO, Mal. He also furnished a report to that effect wherein it was clearly mentioned that LR Plot no.997 and 998. is under possession of the present defendants. Therefore, no further inspection upon the suit property is required. As such, the petition is liable to be rejected. He also furnished the photocopy of the Report dated 11.05.2022 prepared by the Revenue Inspector, Malbazar. Let the same be kept with the record.

In December 2022, the plaintiff filed the instant suit against the defendants for recovery of possession, declaration of title and injunction to the effect that the defendants encroached upon and carried out construction upon the suit land by dispossessing the plaintiff forcibly. Thereafter an application was filed by the plaintiff under Order 26 Rule 9 of CPC for appointment of a Local Investigation Commissioner to ascertain the land in suit plot no.997 and 998 under Mouza Dakshin Chak Moulani, age and condition of the alleged structure, to note the local features involving the suit land and to draw a sketch map showing the suit land and adjacent areas with boundaries. Now, it is a matter of record that certain part of the suit land was encroached by the defendant which pre-supposes that the plaintiff is well aware of its boundaries and after that he leveled allegation against the defendants. Moreso, a bare perusal of the plaint reflects that the alleged structures sought to be ascertained by the plaintiff by way of the instant application was well within his knowledge at the time of the very inception of the suit. As such, it can be presumed that he is also aware of its age and present condition.

Now, it is a settled principle of law that local investigation is the best way to find out the possession when there is dispute regarding identity of the property. Under the guise of local investigation, party who is making the application will not be allowed to fish out evidence. A bare perusal of the plaint reflects that there exists no dispute about the property, its identity and measurement. Moreso, the plaintiff asserted that he has right of possession over the suit property.

Power of appointment of commissioner for local investigation cannot be exercised by the court to enable any party to collect evidence through the Commissioner to prove the factum of possession or enjoyment. It is also settled proposition of law that for a specific allegation made by the plaintiff he has to stand on his own legs by adducing independent and reliable evidence and he could not invoke the provision of Order XXVI Rule 9 of CPC and call upon the court to generate evidence for him. The facts of the instant case suggests that the application under Order XXVI Rule 9 of CPC has been filed by the plaintiff with the ulterior motive of collection of evidence. Therefore, from the aforesaid discussion and the settled principles of law, this Court is of the opinion that the instant application has no legs to stand upon and is liable to be rejected.

Hence, it is

ORDERED

that the application Order XXVI Rule 9 of CPC dated 10.08.2023 is hereby rejected on contest.

Fix 02.05.2024 for PH.

Dictated and corrected

by me:

(Smt. Moumita Mitra)
Civil Judge (Junior Division),
2nd Court, Jalpaiguri.
(J.O. Code No.WB01409)

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