



TRWT080000062023

Present:- Ms. M. Pal

Civil Judge (Jr. Div), Court No. 1

Khowai, Khowai, Tripura

Case No. TS 02 of 2023

Sri Ashutosh Deb Vs. Smt. Mallika Sen & Ors.

02.07.2026

Ld. Counsel Mr. D. Debnath has entered his appearance on behalf of the plaintiff by filing advocate hazira.

Ld. Counsel Mr. C. Das has entered his appearance on behalf of the answering defendants by filing his memo of appearance.

Perused the case record.

Today was fixed for necessary order on the petition filed by the plaintiff side.

Ld. counsel for the plaintiff has filed an application under order XXVI Rule 2 & 9 of CPC r/w Section 151 of CPC praying for appointment of survey commissioner for local investigation of the suit land which states, inter alia, that the plaintiff has filed this suit for declaration of title, confirmation of possession of the plaintiff over the suit land and eviction of the defendants mentioned in the plaint against the defendants on the ground that the defendants were initially permissive possessor of the suit land since the time of their deceased predecessor and after that they have occupied the Schedule II suit land belonging to the plaintiff. The petition also states that the answering defendants No. 1-3 have submitted their WS and the examination-in-chief submitted by Defendant No. 2 shows that

they are not possessing any such land of the plaintiff nor even in permissive possession of the plaintiff but trying to create a cloud that the land of the plaintiff is situated on the Northern side of land of deceased Maniklal Sen and a portion of land measuring 13 satal i.e. 6.5 gandas was transferred by the plaintiff to his nephew Babul Deb through registered gift deed and according to him, it transpired from the gift deed that Maniklal Sen is situated on the Southern side of the land of Babul Deb and on the Northern side, the land of plaintiff is situated and according to the defendants it is quite impossible for them or their predecessor to occupy any portion of land belonging to plaintiff crossing over the land of Babul Deb. The petition also states that in such a situation and for fair adjudication of the matter of dispute and ascertaining the real truth in controversy, a survey knowing commissioner is required to be appointed for identification of the suit land and the possession of land by Babul Deb of RS plot No. 867 & 868 and to submit a report in details touching the above subject matter whether the suit land comprised in PS plot No. 867 is illegally possessed by the defendants of this suit.

In response to the above petition, Ld. Counsel for the answering defendants has filed WO stating therein, inter alia, that the petition filed by the plaintiff is not justifiable at the stage of argument as both the sides have adduced their documentary as well as oral evidence in support of their respective pleading which have been tested through lengthy cross-examination. It also states that from the pleading as well as the evidence on record, it is evident that no encroachment has been made by the answering defendants upon the suit land and at this advanced stage of the suit, the prayer for appointment of survey commissioner is not only unnecessary but also an attempt to fill up the lacunae in the plaintiff's case which is impermissible in

law. It also states that the plaintiff has admitted, inter alia, that the land of defendant No.1 to 4 is situated on the Southern side of the suit land, Babul Deb is on the Northern and Eastern side of the suit land, plaintiff had gifted land to Babul Deb and as per the gift deed, the Southern boundary of Babul Deb's land is the land of Lt. Manik Lal Sen and these admissions clearly establish that the land of Babul Deb lies between the plaintiff and the defendants for which it is practically and physically impossible for the defendants to encroach upon the plaintiff's land without encroaching Babul Deb's land. It further states that Babul Deb has not raised any grievance or complaint regarding any encroachment and the issues involved in the present suit can be effectively adjudicated on the basis of the oral and documentary evidence already on record and there is no ambiguity in identification of the suit land necessitating local investigation overriding substantive evidence already adduced by the parties. It further states that where the identity, location and boundaries of the land are already clear from the evidence on record, no such appointment is warranted as in the present case, the plaintiff has clearly described the boundaries and made categorical admissions during cross-examination which leave no ambiguity regarding the position of the suit land and hence the prayer may be rejected which is nothing but an attempt to delay the proceedings and to create confusion in the adjudication of the case.

Heard both the Ld. Counsels on the prayer for appointing survey commissioner for local investigation of the suit land and considered.

During hearing, Ld. Counsel for the plaintiff has relied on the decision of Hon'ble High Court of Tripura passed in Smt. Sarmistha Basak & Anr. vs. Smt. Dhanadebi Jamatia & Ors., RSA 37 of 2022, wherein dismissing the RSA, Hon'ble High

Court of Tripura has held that the plaintiff was at liberty to file an application for local investigation if they were not satisfied with the averments made in the written statement but neither before the trial court nor before the first appellate court, the plaintiffs thought it necessary at all to file an application for appointing an expert for local investigation of the disputed land in question described in the schedule of the plaint.

Ld. counsel for the plaintiff has also relied on the decision of Kisanlal Maniklal Rathi vs. Dinkar Yashwant Patil decided on 18.08.2003 [2004(1)MHLJ138] by Hon'ble Bombay High Court wherein it is held that under Order 26, Rule 9 of the CPC, the court has the discretion to order local investigation or not. The object of the local investigation is not so much to collect evidence which can be taken in court but to obtain evidence which from its peculiar nature can only be had on the spot. The cases of boundary dispute and disputes about the identity of lands are instances, when a court should order a local investigation under Order 26, Rule 9 of CPC. In order to determine whether there has been an encroachment, it is always desirable to get the fields measured by an expert and find out the area encroached upon. Oral evidence cannot conclusively prove such an issue.

On the other hand, Ld. Counsel for the answering defendants has relied on the decision of Hon'ble Calcutta High Court passed in Sayan Sarkar vs. Purnendu Banerjee & Anr., reported in AIR 2024 CALCUTTA 231, wherein it is held that the object of local investigation is to enable the court to elucidate any dispute with regard to the identity of the lands or when there was a boundary dispute and the exact extent of the land enjoyed by the parties could not be ascertained on the basis of the respective deeds and other related documents.

During hearing, Ld. Counsel for the plaintiff has submitted

that from the oral evidence adduced by both the sides and the WS it is clear that the defendants have tried to create a cloud over the identity of the suit land stating that the land of Babul Deb is in between the land of the plaintiff and the defendants and hence it is not possible for them to encroach the suit land without crossing the land of Babul Deb and hence, the prayer for local investigation by a survey commissioner may be allowed to clear that cloud as the same is required for proper adjudication of the dispute and the prayer for local investigation can be made at any stage of the suit.

Ld. Counsel for the answering defendants submitted the facts mentioned in the WO and resisted the petition on the ground of filing the same at this belated stage only to fill up the lacunae in the evidence of the plaintiff as the plaintiff, during his cross-examination, himself admitted that he transferred a portion of his land to Babul Deb and defendants' land is after the land of Babul Deb. Ld. Counsel also submitted that the defendants have no adjacent boundary with the plaintiff and admittedly the gift deed executed by the plaintiff to Babul Deb states different boundary and hence the case of both the parties can be decided through the evidence already adduced by both the sides which has no ambiguity. Ld. Counsel also submitted that the plaintiff was aware about the plea of the answering defendants from the very beginning of the suit by going through the averments made in the Written Statement but kept quiet and did not feel the necessity to pray for local investigation of the suit land and only after going through the lacunae in his evidence on record, the plaintiff made the prayer with an attempt to fill in the gaps and hence the present petition may be rejected as the prayer for local investigation at this stage is only dilatory tactics.

I have gone through the petition, WO filed by the

answering defendants, the entire case record including the evidence on record adduced by both the sides and the decisions referred by both the Ld. Counsels.

From the pleading of the plaintiff, it appears that this is not a case of encroachment of the suit land but of permissive possession of the schedule-II suit land given to the defendants through their deceased predecessor and subsequent denial by them to vacate the suit land. On the other hand, answering defendants have denied to have been in permissive possession of the schedule-II suit land ever. It further appears that the plaintiff has adduced evidence in the same tune with his pleading that the defendants were his permissive possessor in respect of the schedule-II suit land.

It further appears that the prayer for local investigation of the suit land by appointment of survey commissioner is made on the ground that the answering defendants, during evidence stage, have tried to create a cloud over the boundary of the suit land and it is prayed for allowing the local investigation to find out the identification of the suit land and whether the suit land is illegally possessed by the defendants or not. It also appears that the evidence of both the sides are completed and both the parties have adduced oral as well as documentary evidence in support of their respective pleadings which is clear and cogent requiring no local investigation of the suit land at this belated stage of the suit.

In view of the above discussion and after going through the case record minutely and after hearing both the Ld. Counsels and considering the fact that the questions raised in the prayer of the plaintiff have their answers in the case record itself, this court is of the considered opinion that local investigation of the suit land on the questions mentioned in the

petition is not required at this belated stage of the suit.

Accordingly, the prayer is rejected.

Fix **12.08.2026** for argument.

As dictated

Ms. M. Pal