

19th November, 2020
(D/L No.1)
(SKB)

C.O. 1091 of 2020
(Via Video Conference)

Amal Mukherjee and another
Versus
Ashok Mukherjee and another

Mr. Supratim Dhar,
Mr. Argha Banerjee,
Mr. Sachindranath Misra
... for the petitioners.

The petitioners have assailed an order dated 21st December, 2019 passed by the learned Civil Judge (Senior Division), Uluberia, Howrah in Title Suit No. 175 of 2016.

The petitioners are the defendant nos.1 and 2 in a partition suit filed by the plaintiff/opposite party no.1.

Learned Counsel appearing for the petitioners places certain parts of the evidence of the Partition Commissioner which is contrary to the report filed by the Partition Commissioner mentioning that the eastern portion of the dwelling house includes a “pond”.

In the cross-examination, the existence of the pond is denied. Counsel places colour photographs taken on May, 2018 which clearly show that there is a pond in the concerned part of the property. He also places the impugned order which was passed in an application filed by the petitioners under Order 18 Rule 18 of The Code of Civil Procedure. The order impugned rejected the application filed by the petitioners upon holding that the evidence of the Partition Commissioner could be

challenged at an appropriate stage after considering the written objection filed by the petitioners.

Upon hearing learned Counsel appearing for the petitioners, this Court is of the view that Order 18 Rule 18 of the C.P.C. gives the power to a court to inspect any property at any stage of the suit on a question which is pertinent to the suit and also make a memorandum of any relevant facts observed at such inspection. The relevant part of the impugned order shows that the learned Court below did not give due weightage to the power which is given to the court under Order 18 Rule 18 of the C.P.C. and the reason given for rejection of the petitioners' application under the said provision cannot be supported in law. The basis of rejecting the petitioners' application on the ground that the Partition Commissioner's evidence can be dealt with at an appropriate point of time since the report is yet to be accepted of does not stand to reason.

The next date of hearing has been fixed on 17th December, 2020 for arguments in respect of the written objection filed by the petitioners.

In the view of this Court, the issue of the Partition Commissioner's evidence and report being contrary and also inconsistent with the photographs relied on by the petitioners is clear from the records and should be decided before final arguments are made by the parties.

In view of the above, the order dated 21st December, 2019 passed by the learned Civil Judge (Senior Division),

Uluberia, Howrah is set aside. The learned Civil Judge is requested to consider the issues raised by the petitioners with regard to existence of water body before final arguments are made on behalf of the parties. The petitioners are directed to serve a copy of this order on the plaintiff/opposite party no.1 as well as the defendant no.3 within two days from date.

C.O. 1091 of 2020 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)