

S/L 3
19.03.2021
Court. No. 19
GB

C.O. 382 of 2021

Sri Shankar Pal
Vs.
Sri Sudarson Manna & Ors.

(Through Video Conference)

Mr. Tanmoy Mukherjee,
Mr. K. Raihan Ahmed

...for the Petitioner.

Despite service none appears on behalf of the opposite parties.

Affidavit-of-service filed in Court today, is taken on record.

It appears that the learned advocate on behalf of the opposite parties appearing in the learned court below was also served physically. Thus, this Court does not find any reason not to take up the revisional application.

In the revisional application the defendant challenges an order dated January 5, 2021 passed by the learned Civil Judge (Junior Division), 1st Court at Contail, Purba Medinipur, being aggrieved by the later portion of the order, by which an application under Order 39, Rule 7 of the Code of Civil Procedure was allowed for appointment of learned advocate Commissioner *ex parte*. The order impugned is quoted below for convenience.

“Now, the petition for local inspection is taken up for hearing.

Heard Ld. Advocate for the plaintiffs.

Persued the petition and materials on record.

By filing the instant application, plaintiffs want to bring the existing position of the suit property on record which is necessary for proper and effective adjudication of the case.

Accordingly, prayer for local inspection is hereby considered and allowed on ex parte as per Order 39 rule 7 and Order 39 rule 8(3) of C.P.C.

*Let, **Ld. Advocate Sri Goutam Kumar Senapati** be appointed as Commissioner for holding the local inspection in terms of the points laid down in the petition.*

Plaintiffs are directed to pay sum of Rs.3,000/- (Rupees three thousand) at once towards the cost of commission work to the Ld. Advocate Commissioner in hand and file a receipt in the Court as per the proposal of the Civil Bar Association, Contai.

Writ will be issued after payment of cost to the Advocate Commissioner and filing the receipt in the Court.

*Ld. Advocate Commissioner is directed to serve notice upon both the parties before holding inspection. He is also directed to submit his report with photographs in various angles before the next date fixed. **COVID protocol should be maintained as per the guidelines of the Health Department and State of West Bengal and the norms of social distancing should be followed. The Advocate Commissioner should***

complete the work properly as per the petition filed by the plaintiffs and there must not be any avoidance of such work even after payment he received by hand. As soon as he received the payment he should hold the local inspection and submit the report before this Court positively. There must not be any derogation of the legal duty which is entrusted upon him in holding local inspection and proper status and the nature and character of the land should come in his report along with the observation.

Plaintiffs are directed to supply the relevant papers and documents to the Ld. Advocate Commissioner at once.

*To **04.02.2021** for Local Inspection Report.”*

It is the general rule that an application for local inspection should be disposed of upon service of notice upon the contesting party and allowing the said party to file the written objection before matter is disposed of.

Reference is made to the decision ***of Sri Arabinda Saha Versus Protiti Chatterjee & Ors.*** reported in ***CAL LT 1996(1) HC 17*** passed by a learned Judge of this Court in which it has been held that except in very very serious situations where the plaintiff alleges immediate dispossession and threat, an ex parte order of local inspection can be passed as a gap of a few days awaiting service upon the adversary or upon the party against whom

such allegations are made, would result in paramount injustice and irreparable loss and injury and the object of allowing such an application would be defeated. Without there being such a situation, normally, the Court should direct service upon the adversary and afford an opportunity to the adversary to oppose such an application before the same is disposed of.

Reference is also made to the decision of ***Electrosteel Casting Ltd. Versus Apurba Kumar Dewan & Ors.*** reported in ***CAL. LT. 1995(2) HC 81***, where it has been held that when the order impugned does not disclose any reason or any iota of material to show that unless a local inspection is allowed *ex parte*, the parties seeking such inspection would suffer great injustice and irreparable loss and injury an *ex parte* order of local inspection should not be allowed.

From the order impugned, I do not find that the learned court below has recorded any reason while allowing such inspection. Even if, the application for local inspection is taken up for consideration to examine whether such a situation for immediate protection was required and an order in terms of Order 39, Rule 8(3) of the Code of Civil Procedure should be passed, the points for inspection as per the contentions of the plaintiffs need to be adverted to. That are as follows:

“POINTS FOR LOCAL INSPECTION

- i) *To note and report about the present topography of the (Ka) suit land,*
- ii) *To note and report as to whether the (Ka) suit property is being enjoyed in a compact block or not,*
- iii) *To note and report as to whether there are parking space, multi-storied building in the adjoining land to the (Ka) suit land or not,*
- iv) *To note and report as to whether there are boundary wall exists over the (Ka) suit property or not,*
- v) *To note and report all other local important features which may be seen at the time of holding local inspection,*
- vi) *To draw a field note as per physical position, to prepare a Hands Sketch map thereof, and prepare a report and to submit the same before the Ld. Court at an early date.”*

Having considered the points for local inspection, I find that the plaintiffs wanted the state of things as they are in the suit property to be inspected. There is no complaint with regard to immediate damage, destruction or paramount injury that may be caused to the plaintiffs if such *ex parte* local inspection is not allowed.

Under such circumstances, the later portion of the order impugned is set aside and quashed. The learned court below is directed to hear out the application afresh upon affording an opportunity to the defendants to file their written objection and contest the same. It is made clear that the direction of this Court shall not be construed as an

observation on the merits of the application for local inspection. The said application will be considered on its own merits and on the basis of the pleadings and submissions of the parties independently by the learned court below.

The revisional application is disposed of.

However, there will be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)