

20.04.2021
Court No. 19
Item no.10
CP

C.O. 764 of 2021

Bhanunath Bera & ors.
vs.
Shyamal Jana & ors.

(via video conference)

Mr. Somnath Ghosal

.....for the petitioners.

This revisional application arises out of an order dated February 17, 2020 passed by the learned Civil Judge (Junior Division), 4th Court, Howrah in Title Suit No. 1327 of 2018.

By the order impugned, the learned court below rejected an application under Order 39 Rule 7 of the CPC filed by the defendants in a suit for declaration of title and permanent injunction. Prior to hearing of the application under Order 39 Rules 1 & 2 of the CPC filed by the plaintiff, the defendants filed the application for local inspection for noting certain points which are quoted below:

“1. To draw a rough sketch map of the suit Dag showing the occupied portion of the Plaintiff and the defendants’ residence and the common passage of both the parties.

2. To mention the electric fitting coming to the defendants residence on which side of the defendants’ residence.

3. To note down the common passage of the Defendants running from Panchayet Road to Defendants’ residence.

4. To note down whether any dirty articles are being stored over the common passage. (defendants’ common passage).

5. To note down the local features as per direction of the defendants.”

It is the contention of the petitioners that before considering the application for injunction and the prayers made therein by the plaintiff with regard to an ad-interim order restraining the defendants from disturbing the plaintiff's enjoyment of the common passage being B Schedule Property, the Commissioner should be appointed to find out who was in actual possession of the common passage and the access of the defendants to the electrical fitting and further as to whether there were any articles or dirty articles stored in the common passage.

From the reading of the application for injunction it appears that the dispute arose between the parties over extension of electrical lines. It is the case of the plaintiff that the defendants were allowed by the plaintiff as a good neighbour to draw electrical lines over the plaintiff's passage but, thereafter, the defendants have been disturbing the exclusive possession of the plaintiff in respect of the passage, of which the plaintiff claims to be the exclusive owner.

I find that the learned court below having considered the points for inspection, came to the finding that the defendants by filing the said application were trying to fish out the evidence. That possession and usage of the alleged passage were not to be decided by local inspection.

I do not find any irregularity in the order impugned.

It is for the plaintiff to prima facie, prove before the learned court below whether the temporary injunction as prayed for should be granted or not. The learned court below will decide the application for injunction on the prima facie case, balance of convenience and inconvenience and irreparable loss and injury. The local inspection as prayed for by the defendants is not required for the above purpose at this stage.

Moreover, it is settled law that local inspection cannot be allowed for collecting evidence with regard to possession and use of a particular property in question. Only the local feature of a property can be allowed to be seen in a local inspection which is not the case as of now.

Thus I do not find any material irregularity in the order impugned.

The revisional application is dismissed. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)