

S/L 23
07.04.2021
Court. No. 19
GB

C.O. 807 of 2021

Suravi Sarkar & Ors.
Vs.
Pradip Das & Anr.

(Through Video Conference)

*Ms. Paromita Malakar (Dutta),
Mr. S. Das.*

...for the Petitioners.

Mr. Souri Ghosal.

...for the Opposite Parties.

This revisional application arises out of an order dated February 26, 2021 passed by the learned Civil Judge (Junior Division), 1st Court at Uluberia, Howrah in Title Suit No.317 of 2020.

By the order impugned the learned court below allowed an application for local inspection under Order 39, Rule 7 of the Code of Civil Procedure. The said application was filed by the opposite parties/plaintiffs. The application was filed without service of the same upon the petitioners/defendants. The learned court below came to the conclusion that the defendants were threatening to put a gate and the padlock on the northern end of the 'C' schedule passage which would amount to violating the *ad interim* order of injunction and as such allowed the application for local inspection ex-parte.

It is submitted by the petitioners that the learned court below allowed the said application for local inspection

without service of the said application upon the defendants and thereby not allowing the defendants to contest the proceedings.

From the order impugned it appears that the learned court below was of the view that for the ends of justice and for proper adjudication of the dispute, a local inspection was necessary and no prejudice would be caused to the defendants as the defendants would always be in a position to challenge the commissioner's report.

In my view local inspection cannot be directed as a matter of right and ought not ordinarily be allowed ex parte without service of the application upon the contesting party who may be affected by such an order. Under Order 39, Rule 8 of the Code of Civil Procedure there are exceptional situations when the Court can waive the service of the notice of the said application but from the order impugned it does not appear that the court had recorded reasons for applying the provisions of Order 39, Rule 8 of the Code of Civil Procedure in this case. No exceptional situation has been recorded. Only a threat of fixing a gate was alleged by the plaintiff.

It is submitted by the learned advocate for the plaintiffs that the commission has already taken place in the presence of both the parties.

The order impugned under such circumstances is not sustainable in law and the same is set aside. The subsequent

order dated March 26, 2021 praying for recalling of the order impugned is also set aside.

The learned advocate for the opposite parties herein is directed to serve a copy of the application under Order 39, Rule 7 of the Code of Civil Procedure to the learned advocate for the petitioners within 10 days from date. The petitioners will file their written objection to the said application within 10 days thereafter. The learned court below will hear out the application for local inspection afresh within a week thereafter and pass necessary orders.

This Court has not gone into the merits of the claims of the parties. The learned court below shall proceed independently and in accordance with law.

In view of the above commission work, if held, stands automatically cancelled.

The revisional application is disposed of.

There will be, however, 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.)