

25
20.07.2021
TN

CO No.1219 of 2021

Asta Kumar Hait and another
Vs.
Badal Chandra Das & Sons

(Via video conference)

Mr. Animesh Paul,
Ms. Fatima Hassan,
Ms. Shaloni Basu

.... for the petitioners

Despite service, none appears for the opposite party.

Affidavit-of-service filed in court today be kept on record.

By the impugned order, the trial court has appointed a Commissioner to hold local inspection, for the purpose of ascertaining “the extent of tenancy” of the plaintiff, although the question of tenancy of the plaintiff itself is in controversy in the suit.

Such an inspection, if allowed, would amount to a roving enquiry to fish out evidence, prior to any adjudication and/or hearing on the question as regards whether the plaintiff is actually a tenant in respect of the property-in-question or not.

Hence, the impugned order was passed without jurisdiction.

Accordingly, CO No.1219 of 2021 is allowed, thereby setting aside the impugned order dated April 5, 2021 passed in Title Suit No.980 of 2020 and rejecting the application for local inspection passed by the trial court.

However, it is made clear that it will be open to both the parties to seek local inspection in future and the same shall be adjudicated by the trial court after adduction of evidence, if deemed necessary by the court below for a proper adjudication of the suit.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)