

(17)
09.09.2021
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

(Via Video Conference)

CO No. 1475 of 2021

Smt. Mahua Pradhan (Maikap) & anr.

-versus-

Smt. Manashi Maity & ors.

Mr. Asish Chandra Bagchi,
Mr. Prabir Kumar Misra,
Mr. Shibendra Nath Chattopadhyay,
Mr. Priyam Misra,
... for the petitioners.

Mr. Rabindra Nath Datta,
Mr. Manoranjan Jana,
... for the opposite party no. 1.

The plaintiffs in a suit for declaration are the petitioners of the present application under Article 227 of the Constitution of India which is directed against the order no. 40 dated July 28, 2021 passed by the 1st Court of learned Civil Judge (Junior Division), Contai, District: Purba Medinipur in Title Suit No. 130 of 2017.

The petitioners have filed an application under Order XXXIX Rule 7 of the Code of Civil Procedure for appointment of an advocate commissioner to hold local inspection of the suit property to demonstrate that the defendants/opposite parties are executing construction work over the suit property in violation of the order of injunction.

The grievance of the petitioners is that the learned Trial Judge is delaying the disposal of the said application.

Mr. Asish Chandra Bagchi, learned Senior Counsel appearing for the petitioners submits that unless an advocate

commissioner is immediately appointed to hold the local inspection of the suit property, whole purpose of the said application would be frustrated.

Mr. Rabindra Nath Dutta, learned counsel appearing for the opposite party no. 1 submits that his client is making construction in terms of the sanctioned plan. He emphatically denies the allegation of the petitioners that such construction is being carried out in violation of the order of injunction. He submits that an advocate commissioner if appointed, his client has no objection.

That being the stand of the contesting opposite party no. 1, the learned Trial Judge is directed to allow the application filed by the petitioners for appointment of an advocate commissioner on communication of this order. The cost of the commission is to be borne by the plaintiffs/petitioners.

Subject of the satisfaction of the learned Trial Judge, the defendant/opposite party no. 1 is at liberty to apply for inspection of the suit property on any relevant point(s) other than the points on which the plaintiffs/petitioners have already applied for.

CO 1475 of 2021 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)