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Ct. 18
23.11.2021

**C.O. No. 1625 of 2021
(Via Video Conference)**

**Sri Sudip Basu alias Bose & Anr.
Vs.
Smt. Chitra Bose alias Basu & Ors.**

Mr. Balaram Ganguly,
Mr. Kartick Chandra Mondal ... For the petitioners.

Mr. Sandip Mandal ... For the O.P. No. 35.

Affidavit-of-service filed on behalf of the petitioners in Court today be kept with the record.

The plaintiffs in a suit for partition are the petitioners of the present application under Article 227 of the Constitution of India which is directed against Order No. 13 dated August 24, 2021 passed by the learned Judge, 10th Bench, City Civil Court, at Calcutta in the said suit being Title Suit No. 513 of 2020.

The learned Trial Judge by the order impugned has appointed an advocate commissioner to inspect a steel Almirah kept in a room at the second floor of the suit premises and to make inventory of the articles kept in the said Almirah with a direction upon the learned advocate for the plaintiffs to hand-over the key of the said Almirah to the commissioner.

The learned Trial Judge has passed the said order on an application filed by the defendant no. 35 under Order XXXIX Rule 7 of the Code of Civil Procedure for holding local inspection on the following points:-

“1. The removal of the lock placed by the plaintiff and the defendant no. 35 on the said first room on

the second floor of Premises No. 25, Kalidas Singhee Lane, P.S. Amherst Street, Kolkata-700 09.

2. Wearing Apparels and garments as mentioned in the Schedule to the application by the Defendant no. 35 dated 10.12.2020 on proper identification the same may be handed over to the defendant no. 35.

3. After opening of the Steel Almirah with the key of the Defendant No. 35 and the garments be handed over to the defendant no. 35.

4. To put lock again by the Plaintiff and the Defendant on the room wherein Steel Almirah is located as per schedule as mentioned in the application dated 10.11.2020.”

The inspection on the aforesaid points is beyond the scope of Order XXXIX Rule 7 of the Code inasmuch as the said Almirah is neither the subject-matter of the suit nor any question is likely to arise therein in respect of the said Almirah.

The order impugned for the aforesaid reason is not sustainable and is accordingly set aside.

C.O. 1625 of 2021 is thus allowed without any order as to costs.

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

(Biswajit Basu, J.)