

10.02.2021
Sl. No. 3
srm

C.O. No. 2605 of 2019

Ummat Ali
Vs.
Md. Samsuddin & Ors.

Mr. Syamal Kumar Das,
Ms. Smita Pal

...for the Petitioner.

Mr. Sukanta Chakrabarty,
Mr. Anindya Halder

...for the Opposite Party
Nos.1(a) to 1(f), 2 & 3.

Affidavit-of-service is taken on record. The opposite parties have been served.

This revisional application has been filed challenging an order dated passed by the learned Civil Judge (Junior Division), 2nd Court, Serampore, District-Hooghly in Title Suit No.238 of 2018. The petitioner is aggrieved by an order of rejection of the application under Order 37 Rule 7 of the Code of Civil Procedure.

Mr. Das, learned Advocate appearing on behalf of the petitioner, submits that the specific allegation in the proceeding before the learned Court below was that a shop room was licensed to the defendants and the same was demolished and a new construction was made. The license was for running a Muslim Hotel.

An order of *status quo* was passed restraining the defendants from changing the nature and character of the suit property and also from making any construction. The petitioner filed an application under Order 39 Rule 2A of the Code of Civil Procedure alleging the violation of the order of *status quo*. The petitioner thereafter filed an application for local inspection by appointment of a learned Advocate-Commissioner with the following points. The schedule of commission is quoted below:

- “1. To go to the locale and drawn a rough sketch map of the suit property.
2. To note whether any reconstruction or new construction has been made or not in the suit property.
3. To note is there any stag of building materials regarding re-construction or new construction in the suit property. If yes, then note the details of stag materials.
4. To note any other local features as shown by the plaintiff’s advocate regarding.”

Mr. Das relies on the decisions of this Court in the matter of (1) Priti Roy vs. Jaya Naskar reported in 2012(2) CHN (CAL) 678 and (2) Ashok Saha vs. Mira Shaw reported in 2011(4) CHN (CAL) 733 in support of his contention.

According to Mr. Das, a clear picture with regard to the extent of reconstruction done on the suit premises by demolition of the licensed room was necessary for proper adjudication of the dispute and also to ascertain whether there has been any violation of the order of *status quo*. An order for

local inspection in aid of adjudication of the dispute and the Misc. Case filed for violation of the order of *status quo* was necessary. Order 39 Rule 7 empowers the Court to have the suit property inspected for obtaining a clear picture thereof in general and particularly as to whether any structure is standing thereon or not.

Mr. Chakrabarty, learned Advocate appearing on behalf of the opposite party Nos.1(a) to 1(f), 2 and 3, contesting defendants submits that the allegations in the plaint with regard to alleged demolition of the shop room/ hotel and construction thereon is totally vague. That there are other construction in the area in question. That when the averments in the plaint are not clear, the question of allowing a local inspection did not arise. Mr. Chakraborty relies on a decision of this Court in the matter of Sukumar Mullick & Ors. vs. Barun Mullick & Ors. reported in (2013) 2 Cal LT 523 in support of his contentions.

According to Mr. Chakrabarty, inspection would amount to allowing fishing out of the evidence in order to fill up the lacuna already existing in the plaint. Mr. Chakrabarty submits that it would not be possible for the Advocate-Commissioner to ascertain the age of the construction and when the said construction was made. He submits that the

plaintiff was required to prove his own case and allowing the local inspection would amount to the Court coming to the aid of a party to prove his own case.

It appears from the plaint that the plaintiff's case is that the plaintiff's father issued a licence for running a Muslim hotel business. Licence fees were paid to the plaintiff's predecessor at the rate of Rs.22/- per month by the defendants. Thereafter the payment of licence fees was stopped. The plaintiff suddenly noticed that the licensed room/shop for running the Muslim hotel business was demolished and the pacca construction was going on.

Thus the suit was filed and an order of *status quo* was granted. The plaintiff alleged violation of the order of *status quo*. Application under Order 39 Rule 2A has been filed. The plaintiff then filed an application for local inspection.

Having considered the nature of the local inspection, this Court is of the opinion that the local inspection with regard to the point No.1 and point No.3 should be allowed in terms of the schedule of commission. Point No.2 cannot be allowed as it is not possible for the Advocate-Commissioner to ascertain the age of the construction and the reconstruction. This is a matter of evidence, which has to be proved at the trial. With regard to the point No.4 the Commission should be

restricted to the local feature and present status of the alleged shop room, which was allegedly demolished by the defendants. Beyond the premises/shop room from which the Muslim hotel business was going on, other construction in the area shall not be a part or form of the local inspection. The parties will identify the alleged shop room.

The observations made hereinabove are restricted to the application for local inspection by an Advocate-Commissioner. The other contentions of the plaintiff and the defendants are not decided or taken into account. The defendants are also claiming title and this order shall not have any effect on the rival claims of the parties.

The impugned order is set aside and quashed.

The revisional application is disposed of with a direction upon the learned Court below to appoint an Advocate-Commissioner for the purpose of local inspection in terms of this order and the learned Court below is free to decide the remuneration and make necessary orders accordingly.

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.)