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AKG 23-02-2022
Ct.21

C.O. 76 of 2022
Sri Biman Pandit & Ors.
Versus
Sanatan Bag & Ors.

(VIA VIDEO CONFERENCE)

Ms. Shila Sarkar,
Mr. Tanmoy Mukherjee
...for the Petitioners

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal
...for the Opposite Parties

The petitioners are represented by their learned lawyers and opposite party nos. 1 to 5 are represented by their learned lawyers.

None appears on behalf of the opposite party nos. 6 to 15 and on behalf of the proforma respondent nos. 6 to 24.

The revisional application is taken up for hearing.

The petitioners being aggrieved by the order of appointment of an advocate commissioner for local inspection of plot no. 9 passed by the order being No. 16 dated 10th December, 2021 of the learned Civil Judge (Junior Division), 2nd Court at Burdwan in Title Suit No. 308 of 2020 have filed the instant revisional application.

It has been contended by the learned advocate for the petitioners that the petitioners and the opposite party nos. 16 to 24 have filed the said title suit in representative capacity for permanent injunction and

and/or declaration that the plot no. 8 measuring about 71 decimal is all along used as burning ghat/cremation ground.

The defendant nos. 1 to 8 contested the said case by filing the written statement and they have alleged that they have become the owner of the plot no. 8 by virtue of the purchase. Denying existence of any burning ghat/cremation ground on the land of plot no. 8. The cremation ground is on plot no. 9.

By filing of an application under Order 39 Rule 7, the defendants appear to have prayed for local inspection of plot no. 9 in order to find out the topography of the same and the local features of the same through an advocate commissioner. Such prayer of the defendants was allowed by the learned Court below by passing the impugned order.

A question arises in the mind of the Court, how the advocate commissioner can ascertain the land which he is going to inspect falls within plot no. 9 without local investigation and survey of the land.

The order impugned being not proper is set aside.

It has already been contended by the learned advocate for the opposite parties that even the petitioners have prayed for local inspection of plot no. 8 to find out whether there exists any burning ghat or burial ground. The dispute whether the burning ghat or burial ground exists in plot no. 8 and plot no. 9 can

be decided only after the survey of the land with a bare eye estimation one can not say whether the burning ghat is located within plot no. 8 or plot no. 9.

Consequently, the application under Order 39 Rule 7 C.P.C. filed by the petitioner too fails.

Parties are at liberty to get local investigation of the disputed plot no. 8 as well as plot no. 9 through an Amin of the office of B.L.&L.R.O. to find out the exact location of disputed burning ghat whether it falls under plot no. 8 or plot no. 9.

Accordingly, the revisional application being **C.O. 76 of 2022** is disposed of.

There shall be no order as to costs.

Interim order, if any, stands vacated.

Parties are to act on the server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities.

(Kesang Doma Bhutia, J.)