

26.07.2022

C.O. 773 of 2022

Arkopaul Das and Ors.
Vs.
Arup Kumar Das and Ors.

Mr. S. Chatterjee ..For the petitioner.

Mr. S. Chakraborty
Mr. A. Halder ..For the O.P. No. 1.

Let affidavit of service filed on behalf of the petitioner be kept with the record.

The subject matter of challenge in this revisional application is against rejection of a prayer for local inspection under Order 39 Rule 7 of the CPC.

Admittedly, the prayer for local inspection was filed by the petitioners/plaintiffs in a suit for declaration to the effect that “that the defendants have no right to raise brick built wall as described under Schedule D and also sought for a mandatory injunction directing the defendants to demolish the illegally raised brick built wall by the defendants.”

At the very threshold of this case Mr. S. Chatterjee, learned advocate appearing for the petitioner restricts his prayer to point no. 5 and point no. 7 of the points, mentioned in the Schedule for local inspection thereby relinquishing his claim for local inspection, with respect to the rest of the points.

It is an undenying position that the plaintiffs are owners of A Schedule property and defendants are owners of the B Schedule property.

The dispute surface between the parties is with

respect to a brick built wall, which is alleged to have raised obstruction to the plaintiffs in their access to C Schedule property.

Adverting to point no. 5 and point no. 7 of the Schedule of points for local inspection, learned advocate appearing for the petitioners submits that local inspection, if allowed to be held, would facilitate the court below in arriving at appropriate decision of the suit so as to unfold the controversy raised between the parties.

It would be proper here to refer those two points mentioned in point no. 5 and point no. 7 schedule of points for local inspection, which is mentioned in hereinbelow:-

“v) Whether through said opening premises No. 1B, Srish Chandra Chowdhury Lane, P.S, Tala, Kolkata – 700 002 is accessible from 1A, Srish Chandra Chowdhury Lane, Kolkata-700 002?

vii) Whether due to said bricks built wall of 10 Srish Chandra Chowdhury Lane is accessible through premises 1A, Srish Chandra Howdhury Lane?”

Per contra, learned advocate appearing for the opposite party supporting the order of the court below submits that the purposes of this local inspection is to fish out the evidence and nothing else. The points raised and specifically mentioned in point no. 5 and point no. 7, have no reasonable nexus to decide the matter in controversy between the parties.

Having considered the submissions of both sides, it appears that by those two points, sought to be inspected are

in exercise of an endeavor to establish, whether the disputed property, over which mandatory injunction has been proposed for demolition of a brick built wall raised in C Schedule property, is accessible by any alternative way, or passage, which this Court perceives to be not in the domain of prayer for local inspection.

The prayer for rejection of local inspection does not call for any interference.

However, liberty is given to the petitioners to adduce local witnesses at the time of trial to establish the alternative way, if there be any available leading to the access of subject property, irrespective of rejection of prayer for local inspection.

The revisional application is thus disposed of.

The petitioner is directed to make communication to the court below.

(Subhasis Dasgupta, J.)