

30.06.2022
Item No.278
Ct. No.7
CHC
(disposed of)

C.O. 932 of 2021

Pradipta Jana @ Nantu
Vs.
Aloka Jana & ors.

Mr. Debasish Roy,
Mr. Kallol Kumar Maity
...for the petitioner

Mr. Sounak Bhattacharya,
Mr. Sounak Mandal
...for the opposite parties

The subject-matter of challenge in this revisional application is against the order dated 17th March, 2021, allowing local inspection on the prayer of both the parties pursuant to their separate petitions being filed to that effect.

Admittedly, in a pending Partition Suit, by the order impugned, on the individual prayer of petitioner/defendant, and opposite parties/plaintiffs local inspection was allowed appointing learned Commissioner to hold local inspection in terms of the points disclosed in two petitions filed by either of the parties to the case one being filed by the petitioner, and another being filed by the opposite parties.

Mr. Roy, learned advocate for the petitioner advertng to point (B), mentioned under the caption **additional point for local inspection** in the petition

filed by the plaintiffs/opposite parties submits that visually, even after holding local inspection, it cannot be ascertained whether the construction, that exists in the suit property, is old or new one, made by tin or cement pillars with facing gate etc.

Mr. Roy thus is aggrieved against the point (B) mentioned in the petition of the plaintiffs/opposite parties praying for local inspection.

Per contra, Mr. Bhattacharya learned advocate appearing for the opposite parties/plaintiffs submits that when both the prayers, filed by the parties to this case, praying for local inspection individually, having been allowed by the impugned order, there lies nothing to be interfered with in the impugned order.

It is thus contended by Mr. Bhattacharya that in the event of local inspection being concluded in terms of the points mentioned in the petition, filed by the opposite parties/plaintiffs, there will be no prejudice caused to petitioner/defendant.

Having considered the submission of both sides, it appears that Mr. Roy appearing for the petitioner/defendant is fundamentally aggrieved against point (B) seeking a report to ascertain whether the structure is new or old one.

This issue, as raised by Mr. Roy, may be best ascertained upon receiving the report.

Therefore, the commission work requires to be concluded.

The revisional application is thus disposed of giving liberty to petitioner to raise objection, particularly with reference to point (B) mentioned in the petition for local inspection of opposite parties/plaintiffs after submission of learned Commissioner's report, and if any objection is filed, that may be addressed by the court below, giving a decision therefor, providing an opportunity of hearing to the opposite parties/plaintiffs in accordance with the law.

The local inspection Commissioner's report thus may not be accepted by the court below, without affording an opportunity to challenge against the report filed, by the petitioner, particularly with reference to the point (B) mentioned in the petition for local inspection of the opposite parties/plaintiffs.

Petitioner is directed to make communication of this order to the learned court below.

With this observation/direction, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)