

15.06.2022
Item No.3
Ct. No.7
CHC
(disposed of)

C.O. 1202 of 2022

**Ram Chandra Shaw
Vs.
Samar Nath Khan & ors.**

Mr. Sanjay Mukherjee
...for the petitioner

Ms. Shebatee Datta,
Ms. Babita Dey
...for the opposite parties

The subject-matter of challenge in this revisional application is against the rejection of a prayer for Local Inspection Commissioner under Order 39 Rule 7 C.P.C..

Mr. Mukherjee, learned advocate appearing for the petitioner/plaintiff submits that petitioner filed Title Suit No.574 of 2021, now pending before learned Civil Judge (Senior Division), 3rd Court, Howrah, seeking declaration of his tenancy right with a further order that the petitioner could not be evicted from the suit premises without adhering to due process of law.

It is, further submitted by the learned advocate for the petitioner that petitioner/plaintiff has already been favoured with ad interim order of injunction, which has been implemented taking the order of police help. The prayer for local inspection was then made at the

instance of the petitioner/plaintiff, which was previously allowed.

The opposite parties/defendants felt aggrieved with the order allowing local inspection, and challenged the same in C.O. No.1923 of 2021.

Such revisional application was allowed by this Court directing the court below to hear afresh the prayer for local inspection, upon providing sufficient opportunity of hearing to either of the parties to this case.

The court below, by the order impugned has rejected the prayer for local inspection holding that it is basically intended to fish out evidence, and the alleged tenancy being a disputed one, in respect of extent of the area under tenancy. It is thus observed by the court below that in the event of local inspection being allowed, the learned Commissioner, if appointed, would be in difficulty to ascertain the actual area, covered by the extent of the tenancy, allegedly held by petitioner/plaintiff.

Learned advocate for the petitioner disputing with the impugned order submits that the court below has improperly exercised his authority, and arrived at an erroneous decision, while rejecting the prayer for local inspection.

Upon advertng to the schedule of the plaint, learned advocate for the petitioner submits that the extent of the tenancy, held by the petitioner/plaintiff has been vividly disclosed in the schedule, over which, declaration of tenancy has been proposed.

Per contra, Ms. Datta, learned advocate appearing for the opposite party nos.2 to 6 supporting the order of the court below submits that the extent of the tenancy being a disputed one, the learned court below has rightly rejected the prayer for local inspection.

It is submitted by Ms. Datta that the purpose of the petitioner/plaintiff is fundamentally to fish out evidence, favourable to his purpose.

Ms. Datta draws attention of this Court to rent receipts, issued in favour of the petitioner dated 2nd August, 2021 and another rent receipt dated 31st December, 2004 to reveal that the extent of the alleged tenancy may be best ascertained upon consideration of the description of the tenanted premises, mentioned in those rent receipts.

It is thus submitted that the local inspection should not be held in such disputed extent of tenancy.

Having considered the submission of both sides, it appears that a declaration of tenancy right has been proposed in a suit, filed by petitioner/plaintiff, mentioning schedule therefor. With regard to the

points mentioned in the schedule for proposed local inspection, there has been no unusual prayer to reveal the present status of the suit premises, over which declaration has been proposed to be made.

Though, the rent receipts issued to the petitioner/plaintiff, as brought to the attention of this Court by Ms. Datta, appear to be contrary to the schedule of premises, over which declaration has been proposed to be made, but the same being subject of trial, it would be premature one to return a decision on such issue resolving the extent of the alleged tenancy.

Since, a simpliciter prayer for local inspection of the suit property has been proposed to be made, the Court believes that in the event of such local inspection being held, in terms of the schedule of the suit premises, on the points mentioned in petition for local inspection, nobody can claim prejudice by reason of the local inspection having held. The impugned order, is, thus not sustainable, and accordingly, the same is set aside.

The logical conclusion of the suit may be reached at an early date upon collecting evidence to be adduced by either of the parties to this case, in context with the rent receipts produced, and the learned Inspection Commissioner's report.

Learned court below is directed to appoint a Local Inspection Commissioner within fortnight from the date of this order, upon depositing costs of local inspection commission in accordance with the provisions of the law, to be made within three (03) days thereafter.

The local inspection commission should be expeditiously held. This would not however, prevent the opposite parties/defendants to challenge the report of the learned Commissioner's.

In the event of any objection being raised as regards the learned Inspection Commissioner's report, the same shall be resolved in accordance with the provisions of law providing sufficient opportunity of hearing to either of the parties to this case.

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.)