

29.11.2022
Item No.1
Ct. No.7
CHC
(disposed of)

C.O.1791 of 2022

Smt. Mamata Mondal & anr.
Vs.
Shib Sankar Mondal

Mr. Tarak Nath Halder
...for the petitioners

Mr. Sankar Prosad Dalapati,
Mr. Safik Dewan,
Mr. Sourav Mondal
...for the opposite party

Subject-matter of challenge is against the order allowing local inspection *ex parte*.

Mr. Halder, learned advocate appearing for the petitioners submits that initially the prayer for ad interim injunction was refused by the trial court.

Subsequently, injunction was granted by the appellate court against the rejection of prayer for ad interim injunction. After disposal of the appeal, suddenly the opposite party filed a petition for local inspection alleging violation of the injunction order.

It is contended by Mr. Halder that no opportunity of hearing was given to the petitioners and further that local inspection is not necessary to reveal the exact status of the suit property involved in this case.

It is also contended by Mr. Halder that if local inspection is allowed, it would be an unnecessary exercise resulting in delay to the disposal of the suit.

Per contra, Mr. Sankar Prasad Dalapati, learned appearing for the opposite party/plaintiff disputes with the submission of Mr. Halder, replying to the effect that there has been already a specific Misc. Case registered alleging violation of injunction order granted by the trial court under Order 39 Rule 2A C.P.C.

It is contended by Mr. Dalapati that there has been deliberate violation of injunction order and in order to reveal the real picture of the suit property at the moment, there is necessity not only to reveal the exact topography of the suit property, but also to show the extent of violation, already caused with regard to the injunction order, granted by the trial court.

Having considered the submission of both sides, it appears that local inspection allowed *ex parte* is the bone of contention between the parties exists.

Admittedly, commission work is kept on hold because of intervention of this court granting order of stay. When the specific contention of Mr. Halder is that no opportunity was given to the petitioners, while allowing the prayer for local inspection, this Court is of the view that the instant revisional application be disposed of without making any further elaboration on

this issue giving a required direction to the extent necessary.

The impugned order is set aside with a direction upon the court below to hear out afresh the local inspection petition under Order 39 Rule 7 C.P.C., providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

Written objection, if not filed in the meantime, be filed by the petitioners. The same may be filed within seven days from the date of communication of this order.

Such exercise may be completed within three weeks from the date of communication of this order.

It is, however, clarified that the expenses of the commission, if already deposited by the opposite party, may be taken care of, while making consideration afresh of the prayer for local inspection, if at all allowed in accordance with law.

Parties are directed to make communication of this order to the court below.

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.)

