

21.03.2022
Item No.39
Ct. No.7
CHC
(disposed of)

**C.O.1761 of 2021
(Physical Hearing)**

**Sri Chittaranjan Sadhukhan & ors.
Vs.
Mrs. Dolly Gorai**

Mr. M. L. Podder,
Mr. Sanjoy Ghosh
...for the petitioners

The revisional application is against the order dated 10th February, 2020, passed by learned Civil Judge (Senior Division), Sealdah, in Title Suit No.52 of 2016, rejecting the application filed by petitioners/defendants under Section 151 C.P.C.

In view of the nature of the order sought to be made, and also upon perusal of the impugned order, it appears that non service of notice of this application upon the opposite party/plaintiff will not cause any prejudice to her. Accordingly, service upon the opposite party stands dispensed with.

Admittedly, petitioners are the co-sharers with plaintiff/opposite party.

As per submission disclosed by learned advocate for the petitioners/defendants, the share of petitioners/defendants to the extent of 3/4th was

declared by the trial court, while granting preliminary decree.

Further admitted position is that learned Commissioner has been appointed to complete the Commission work, and the same is still continuing.

At this juncture, petitioner took out an application under Section 151 C.P.C. alleging that opposite party/plaintiff had kept the doors of roof under lock and key. The roof of a three storied building, which is suit property, without any controversy, is also under common use.

The plaintiff/opposite party filed written objection disputing with the allegation surfaced against her.

According to plaintiff/opposite party, there is an alternative access leading to the roof of the house, and the access to the roof enjoyed by the plaintiff is through the kitchen, which has been sought to be disturbed with the aid of an application under Section 151 C.P.C. filed by the petitioners/defendants.

Upon perusal of the impugned order, it appears that alternative access to the roof has not been controverted by the petitioners/defendants.

Learned advocate for the petitioners submits that when petitioners are the lions shareholders of the suit property, they must have free access to the roof of the suit property without any hindrance, as sought to be interfered with by the opposite party/plaintiff.

The allegation of availability of alternative access to the roof is nothing but a ploy to frustrate the purpose of the petitioners.

There is no controversy that the commission work is still being continued. The undenyng positioin is that availability of alternative access to the roof of the suit building could not be disputed before the court below by producing sufficient documents.

When Commission work is being conducted, the grievance, so raised by the petitioners may be best addressed by the learned Commissioner. The impugned order thus does not call for any interference.

The revisional application is thus disposed of giving liberty to the petitioners to raise such points before the learned Commissioner, and if any such points are raised by the petitioners, that shall be duly addressed to by the learned Commissioner, while giving effect to the lawful shares, declared for the co-sharers in preliminary decree.

With this direction/observation, 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.)