

17.02.2022
Ct. 21
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C.O. 2190 of 2021
(Via Video Conference)

Bimala Purkait
-Vs-
Prasanta Das & Anr.

Mr. Anupam Bhattacharya,
Mr. Tapas Kumar Mondal,
Mr. Mritunjoy Saha,
Mr. Dilip Kr. Mandal,

... for the petitioner

Mr. Kushal Chatterjee,

....for the opposite parties

The instant application under Article 227 of the Constitution of India is at the instance of the defendant who is facing an eviction suit being aggrieved by an order of rejection of his application for local inspection of non-suited property of the landlords/plaintiffs/opposite parties by learned Civil Judge (Junior Division) at Bidhannagar, in Ejectment Suit No. 64 of 2010 on 25.11.2021.

It has been contended that plaintiffs have filed an eviction suit on the ground of reasonable requirement in spite of having several other properties in an around the disputed premises. Such fact the plaintiffs having other alternative

accommodations is required to be brought on record in an eviction suit on the ground of reasonable requirement.

It has been contended the similar prayer made by the defendant on earlier occasion was rejected by the learned Court below and as such the defendant had filed C.O. 192 of 2021. The Hon'ble Coordinate Bench of this Hon'ble High Court was pleased to set aside the order of rejection of defendant's earlier application under Order 39 Rule 7 of C.P.C. by the learned Court below and directed the learned Court below to decide the application under Order 39 Rule 7 of C.P.C. afresh after giving the parties an opportunity to produce evidence as the ownership of the said non suited properties and directed the Court below to disposed of the application under Order 39 Rule 7 of C.P.C. expeditiously preferably within a three weeks from the date of communication of the order.

It appears in Compliance of such order of the Hon'ble High Court, the learned Court below has taken into consideration the application under Order 39 Rule 7 of C.P.C. filed by the defendant at the juncture when the case was fixed for further examination of P.W. 1 on recall.

It is also seen from the impugned order that in view of the direction of the Hon'ble High Court the plaintiff had filed certain documents in respect of non-suited properties and which have been marked as exhibit 14, 15, 16 and 17. Therefore, the learned Court below held the documents produced by the plaintiffs in respect of the non-suited properties which speak for themselves regarding the quantum of land possessed by plaintiffs by implication of the schedule of those documents. Thereby, held that there is no need for further local inspection of the non-suited properties as the object of Order 39 Rule 7 of C.P.C. is to preserve the suit property and not to collect evidence by passing the impugned order.

Now, let see whether the order impugned suffer from any illegality or irregularity as alleged.

It has come on record that the plaintiff is a Real Estate Developer and it is well known fact whichever property a real estate developer promote he will have some share in the said property. That it is not necessary the promoter will keep his share in those developed properties for his personal use or occupation. In most cases, it is seen the developer also disposing his share in the developed

property to the prospective purchaser. So here it cannot be said that the plaintiffs/developers have other alternative accommodations in all the suit properties which they have developed or going to be developed or is under development process.

That above the impugned order shows that plaintiff no.1/P.W. 1 was examined on recall and he had produced four documents or deeds of non-suited properties showing his share in those properties.

The record shows the defendant/petitioner is facing eviction suit since 2010 and has filed an application under Order 39 Rule 7 of C.P.C. at the time when the trial has already started.

Further this Court is of view, if the defendant think that the plaintiffs are the owners of some other residential or non-residential properties near and around the suit property, burden lies upon him to prove such fact by producing certified copy or Xerox copy of those deeds to satisfy the Court that plaintiffs indeed have alternative accommodation for their residential or for their non-residential purpose. Rather, it appears the defendant instead of production of documents of non-suited properties belonging to the plaintiffs wanted to

collect evidence by way of local inspection of the non-suited properties of the plaintiffs Real Estate Developers through Advocate Commissioner and which is not permissible. Therefore, this Court does not find any reason to interfere with the order impugned passed by the learned Court below.

Accordingly, **C.O. 2190 of 2021 is dismissed.**

Interim order, if any, stands discharged.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)