

06.12.2022
Item No.4
Ct. No.7
CHC
(disposed of)

C.O.3411 of 2022

**Smt. Amita Adhikary
Vs.
Sri Prabhat Das**

Mr. Pinaki Ranjan Mitra
...for the petitioner

Mr. Nilanjan Bhattacharjee,
Mr. Abhilash Chatterjee,
Mr. Saikat Dey
...for the opposite party

The subject-matter of challenge in this case is against the order dated 23rd September, 2022, passed by learned Civil Judge (Junior Division), 1st Court, Howrah, of Title Suit No.989 of 2022 partly allowing the local inspection thereby declining to allow local inspection to be held with respect to Serial no.'b' and 'c', as disclosed in the schedule of points for local inspection.

Mr. Mitra, learned advocate appearing for the petitioner adverting to paragraph-'9' of the injunction application submits that there has been allegation raised against the defendant/petitioner that defendant has been trying to take forcible possession in respect of the northern part of the schedule noted suit property by demolishing the northern side boundary wall lying over the schedule noted suit property, and also illegally

trying to cause damage to the building materials gathered within the suit property.

Upon furnishing such inputs, as disclosed in paragraph-‘9’ of the injunction application mentioned hereinabove, Mr. Mitra submits that opposite party/plaintiff has gathered materials for construction, and already undertaken pilling work for the proposed construction, as a result of which, there has been impact developed in the outer wall of the building possessed by the petitioner/defendant.

It is, thus submitted by Mr. Mitra that if local inspection is held covering all the points, that would rather help the Court to facilitate appropriate decision to be returned in connection with injunction application.

Admittedly, the injunction application has not yet been heard out by the court below on the ground of Caveat being lodged by the opposite party.

The further admitted position is that the opposite party has already filed objection, and injunction hearing is yet to be completed by the court below.

Mr. Mitra in support of the prayer for lineal measurement of the points, disclosed in Serial no.‘B’ and ‘C’ of schedule of points for local inspection, places his reliance upon a decision reported in **(2011) 1 CalHCN 727: (2010) 4 CALLT 23** delivered in the case

of ***Sisir Saha and others –vs.- Baby Begum @
Mehera Begum and another.***

Making reliance upon the decision, Mr. Mitra submits that physical measurement of the suit property is permissible in aid of Order 39 Rule 7 C.P.C.

Mr. Bhattacharjee, learned advocate appearing for the opposite party disputes with the submission raised by Mr. Mitra replying to the effect that the entire purpose of petitioner is to fish out evidence, which should not be encouraged by allowing those two points.

Regarding the applicability of the decision, cited by the petitioner, Mr. Bhattacharjee submits that such decision would hardly find its application in the given set of facts, because the opposite party does not admit the fact raised and presented by the defendant, and rather the opposite party disputes with the facts presented and disclosed in the petition proposing local inspection.

The purpose of lineal measurement with regard to points no.(b) and (c), as per schedule of inspection is to show the alleged action already taken by opposite party, which is a disputed question of fact. If lineal measurement with respect to serial no.'b' and 'c' of points disclosed in the schedule for local inspection is undertaken, that would not cause any prejudice to the opposite party. Since the injunction application has

not yet been heard, the Commission report, if available in the meantime, the same would rather help both the parties to this case in facilitating an appropriate decision by the court below in connection with injunction application.

The Commission work, as such, if held covering all the points in particular 'b' and 'c' together with all other points already allowed would, however, reveal the actual topography and the exact status of the suit property, disclosed in the schedule appended to the plaint.

It is to be put on record that there has been no challenge raised by the opposite party feeling aggrieved with the local inspection being allowed partly in this case.

It is however clarified that plaintiff is under obligation to establish his case, as depicted in the schedule to the plaint, to have his desired declaration. The Commissioner's report may be permitted to be challenged raising objection, if necessary in accordance with the law, and the court below would accept the local inspection commission report, providing opportunity of raising objection by the opposite party.

The revisional application is thus disposed of modifying the impugned order passed by the court below thereby permitting the local inspection to be held with respect to points disclosed in 'B' and 'C' of

schedule for inspection, in addition to points already allowed by the court below. The impugned order is thus modified to the extent mentioned hereinabove. The other portion of the order, however, shall remain unchanged.

The Commission work may be concluded in terms of the order of the court below, preferably, before end of February, 2023.

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.)