

08.03.2022  
(D/L-49)  
Ct.-18  
(Susanta)

C.O. 4080 of 2018  
With  
I.A. No. CAN 1 of 2019 (Old CAN 11255 of 2019)  
I.A. No. CAN 2 of 2021

Smt. Ashima Seal & Ors.  
-Vs-  
Smt. Rita Seal & Ors.

Mr. Subhajit Saha,  
.... For the Petitioner.  
Mr. Arnab Dutta,  
Mr. Sourav Banerjee,  
... For the Opposite Parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiffs in a suit for partition and is directed against order no. 23 dated June 26, 2018, order no. 26 dated August 8, 2018 and order no. 27 dated August 29, 2018 passed by the 13<sup>th</sup> Bench in the City Civil Court at Calcutta in the said suit being Title Suit No. 1484 of 2015.

The defendants, the opposite parties herein, in the said suit filed an application for repair of the portion of the suit property under their occupation.

In aid of the said application, the defendants filed an application for holding local inspection of the suit property by an Advocate Commissioner.

The learned Trial Judge by the order no. 23 dated June 26, 2018 has allowed the said application.

The petitioners filed an application for stay of operation of the aforesaid order. The learned Trial Judge by the order no. 26 dated August 8, 2018, kept the said application with the record and by the order no. 27 dated August 29, 2018 took the report of the Advocate Commissioner on record.

The principal challenge in the present revisional application is the order of appointment of the Advocate Commissioner for holding local inspection of the suit property.

On perusal of the application under Order XXXIX Rule 7 of the Code, it appears that the points on which the inspection of the suit property was sought for are practically the details of the repair work the defendants intend to carry out.

The points of inspection are not relevant to decide the application for repair, as such, inspection of the suit property on those points is an unnecessary exercise.

The order no. 23 dated June 26, 2018 is therefore set aside and as a consequence thereof, the other orders under challenge in the revisional application lose their force.

It is however made clear that this order will not prevent the defendants to take out an appropriate application for holding local

inspection of the suit property on the points relevant to their application for repair.

If such application is made, the learned Trial Judge is requested to expedite the disposal of the said application.

C.O. 4080 of 2018 is disposed of with the above terms.

In view of the disposal of the said revisional application, the connected applications being I.A. No. CAN 1 of 2019 (Old CAN 11255 of 2019) and I.A. No. CAN 2 of 2021 are also disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)