

07.04.2022
Item No.4
Ct. No.7
CHC
(disposed of)

**C.O.1576 of 2020
(Physical Hearing)**

**Sri Sanjib Kumar Mahata
Vs.
Sri Bhola Shit & ors.**

Mrs. Shohini Chakraborty,
Ms. Prajaaini Das
...for the petitioner

Mr. Tanmoy Mukherjee,
Mr. Soumyajit Das Mahapatra,
Mr. Souvik Das,
Mr. Rudranil Das
...for the opposite parties

The subject-matter of challenge in this revisional application is against the acceptance of the learned Commissioner's report.

Admittedly, local inspection commission was allowed under Order 39 Rule 7 C.P.C. on the prayer of defendants/opposite parties in a suit for declaration and injunction.

Mrs. Chakraborty, learned advocate appearing for the plaintiff/petitioner is aggrieved against the acceptance of the learned Commissioner's report, and in furtherance thereof submits that learned Commissioner has not fully complied all the points, sought to be inspected, and instead thereof has held

inspection beyond the points covered in the petition for local inspection.

It is contended by the learned advocate for the petitioner that the sketch map has been accepted as part of the report, which was never directed to be submitted in terms of the points mentioned in the prayer for local inspection, and further that no photographs directed to be obtained in respect of the suit property have been taken.

The infraction thus committed by the learned Inspection Commissioner, while holding local inspection, has rendered the entire efforts to be a futile approach, instead of revealing the true and actual picture of the suit property existing at the moment.

Per contra, Mr. Mukherjee, learned advocate appearing for the opposite parties/defendants submits that the point gone into, beyond the prayer for local inspection, has already been negated by the learned trial Judge, and the sketch map, made part of the report, is incidental to the local inspection, and such point can never be disputed that the learned Inspection Commissioner has gone beyond the points covered in the local inspection, though there has been no photographs taken in respect of the suit property, but when the suit property was subjected to local inspection after being fully identified by the respective

parties, there left nothing to dispute with the impugned learned Inspection Commissioner's report.

Upon perusal of the impugned order, it appears that the learned trial Judge has already negated that part of the report, submitted by the Inspection Commissioner, wherein he ventured to ascertain the age of the alleged structure, raised in the suit property. True it is that no sketch map was directed to be submitted, though photographs were required to be submitted, but submission of the sketch map appears to be incidental to inspection commission. For such submission of the sketch map, the entire report should not be negated. More so, the learned trial Judge has specifically negated the portion of the report, which was covered by the learned Commissioner travelling beyond the points mentioned in the prayer for local inspection. The acceptance of the local inspection report thus does not call for any interference.

However, this would not prevent the petitioner from seeking any fresh local inspection, particularly with collection of photographs in respect of the suit property. If any such prayer is made, that shall be considered by the learned court below in accordance with the provisions of the law, providing sufficient opportunity of hearing to either of the parties to this case.

It is, however, clarified that mere acceptance of the learned Commissioner's report would not prevent the petitioner from challenging the features mentioned in the learned Inspection Commissioner report at the final hearing of the suit.

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.)