

In the High Court at Calcutta
(Civil Revisional Jurisdiction)
Appellate side

S/L No. 15
25.04.2023
Ct-237
(RD)

C.O. 203 of 2023

**Ratan Chakraborty & Anr
Vs
Tapan Chakraborty & Anr**

Mr. Siva Prasad Ghose, Adv.

.... For the petitioners

Mr. Kushal Chatterjee, Adv.
Mr. Shibjit Mitra, Adv.

... For the opposite party No.1& 2

The order no. 28 dated 14.11.2022 passed in connection with Title Suit No. 69 of 2018 is under challenge.

By the order impugned Learned Civil Judge, Junior Division, 2nd Court, Barrackpore disallowed the prayer made under order 39 rule 7 of the Civil procedure Code filed on 05.04.2018 for appointment of an advocate commissioner to inspect the locale in terms of points to be inspected as follows:-

“ 1. Whether there is any name plate by the name “Gour Bishnu priya Jugal Mandi” on the outer wall of the suit schedule property showing identity of ‘Mandi’?

2. Whether there is any idol “Bigrha” placed inside “Grabhagriha” the suit schedule property?

3. Where there are any items or articles intended to be used by the idol/deity/ 'Bagraha' in the suit schedule property?

4. Whether there is any kitchen intended for the sole use of preparation of 'Bhog' for the idol/deity/ 'Bagraha' in the suit schedule property?

5. To take measurement of the said 'Mandir' kitchen, bathroom privy and latrine, etc. and to prepare a rough sketch map.

6. Local features.”

At the time of dismissal of the application under order 39 rule 7 Civil Procedure Code Learned Judge observed, inter alia, as follows:-

“ I have gone through the plaint, petition under Order 39 Rule 7 of CPC, written statement, written objection and documents and the case record. After perusing this Court comes is of the view that the plaintiff has filed this suit for declaration and permanent injunction against the Defendants. So, they are bound to prove the same before this Court. So far as bringing the actual possession over the suit property before this Court is concerned, the spirit of order 39 r 7 CPC is quite different and it cannot be used for collection of evidence on behalf of parties. The plaintiff will have to prove his case by adducing cogent evidence and possession

cannot be proved by collection of evidence through Court. Plaintiff cannot bypass his burden of proof of ownership and possession by praying for local inspection upon the suit property.”

Learned advocate, Mr. Shiv Prasad Ghose, appearing on behalf of the plaintiff /petitioner has submitted that application for local inspection was filed with a view to show the nature of the property and by referring to photographs annexed with this revision application further contended the defendants removed the name plate of the temple by the name “Gour Bishupriya Jugal Mandir” and painted the place of the wall.

In opposition to that, learned advocate, Mr. Kushal Chatterjee, appearing on behalf of the opposite party/defendants has argued that nature of the property was never denied by the opposite party/defendants. Therefore, question of discovery of the nature of property by appointing advocate Commissioner does not arise.

Having heard the learned advocate, I have peruse the plaint along with its prayer as follows:-

“ (a) Decree for declaration that the Suit Property is family Puja room, and it is an ejmali property;

(b) Decree for injunction against the Defendants Nos. 1& 2 to restrain from sale of the Suit Property or its part to any intending purchaser,

(c) Decree for temporary injunction in terms of

Prayer (b);

(d) Decree for cost of the Suit, which the Plaintiffs are entitled to have.”

On careful scrutiny of the pleadings, I find that the bone of contention between the parties was relating to ‘daily Seva puja’ as well as apprehension of disposal of the property at the instance of the defendants. It is needless to mention that such issues can only be resolved through evidence. It is also not out of place to mention here that the injunction application under order 39 rule 1 & 2 of the Civil procedure Code filed by the petitioners/plaintiffs was rejected by the Trial Judge and that order remained unchallenged.

So far as the nature of the property mentioned in the scheduled to the plaint is concerned it has not been denied by the written statement filed on behalf of the defendants.

In terms of the prayer of the suit as well as admission of nature of the property, I find no reason to interfere with the order impugned as no purpose will be served by any local inspection by the advocate commissioner in respect of points mentioned in schedule ‘B’ to the application under order 39 rule 7 read with section 151 of the Civil Procedure Code, other than collection of evidence.

To prove the case plaintiffs have to adduce evidence to prove their case in terms of prayers of the plaint not by local inspection under order 39 rule 7 of the Civil Procedure Code.

Thus being the situation the instant revision application stands dismissed.

Let a copy of this order be communicated to the Court of Learned Civil Judge, Junior Division, 2nd Court, Barrackpore.

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

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

(Bibhas Ranjan De)