

Item No. 9
06.07.2023
Court. No. 19
GB

C.O. 772 of 2023

Smt. Mamata Mondal & Anr.
Vs.
Shib Sankar Mondal

Mr. Tarak Nath Halder

...for the Petitioners.

*Mr. Sankar Prashad Dalapati,
Mr. Safik Dewan,
Mr. Sourav Mondal,
Mr. A.D. Santra*

...for the Opposite Party.

The revisional application has been filed by the defendants in Title Suit No.850 of 2018 challenging an order dated February 27, 2023 passed by the learned Civil Judge (Senior Division), 2nd Court at Baruipur, District-South 24 Parganas.

By the order impugned, the learned court below allowed an application for local inspection which was filed in connection with the Misc. Case No.58 of 2021. The learned court observed that an application under Order 39, Rule 7 of the Code of Civil Procedure has been filed to ensure preservation of the property and to bring on record the correct picture and topography of the suit property as also the status of the suit property. The application was allowed and one Mr. Snehasish Das Mondal, the learned advocate of the local bar was appointed as commissioner to cause the inspection in terms of the application. While deciding the said matter, the learned court also held that it had the jurisdiction to decide the application under Order 39, Rule

2A of the Code of Civil Procedure which was registered as Misc. Case No.58 of 2021.

Mr. Halder learned advocate appearing on behalf of the defendants challenges the order impugned on the following grounds:-

- a) That the matter was not fixed for deciding the point of maintainability of the application under Order 39, Rule 2A of the Code of Civil Procedure which was filed before the learned trial court although the order of injunction was passed by the learned lower appellate court.
- b) That the order allowing local inspection was erroneous as the same had been filed in aid of the application under Order 39, Rule 2A of the Code and unless the maintainability of the application under Order 39 Rule 2A of the Code being Misc. Case No.58 of 2021 was decided, the application in aid of such proceeding, could not be entertained.
- c) The nature of ad interim injunction which was passed by the learned lower appellate court was an injunction upon the defendants from alienating or transferring the property to any third party and hence, the points for local inspection were not relevant for a decision on the application for violation of the order of ad interim injunction.

The Misc. Case No.58 of 2021 was not fixed for hearing on the date the learned court below decided that it

had jurisdiction to entertain the matter, hence that part of the order is set aside.

It appears to this Court that the application for local inspection and the points therein are relevant for the adjudication of the suit, which the learned court below may have overlooked and passed an order allowing local inspection as if, to ascertain the status of the property while deciding the application for violation of the injunction.

The points for inspection are quoted hereinbelow:-

“(Points for Local Inspection)

- 1) Present nature and character of the suit plot.*
- 2) To note any new structure has been made on the suit property.*
- 3) To note how many rooms are on the suit property. who are in occupation of their rooms.*
- 4) To note whether any portion of the top floor ruff has been covered by the tin shed in the suit property.*
- 5) To note any building materials are lying on an over the suit property.”*

It is true that the application was filed by mentioning the misc. case as also the suit number. The misc. case and the suit was running parallely on the same date. The order sheet reflects so. Thus, the order impugned with regard to allowing the application under Order 39, Rule 7 of the Code in the misc. case is modified to the extent that the application under Order 39, Rule 7 shall be treated as an application in the suit. The points for inspection which is stated hereinabove, are relevant for the suit. An application for local inspection is made in order to ascertain the status of a property so that if any wastage, damage or mischief is caused to the property during the pendency of the suit, the court would be in a position to ascertain the same by referring to

the report of local inspection. The suit is for declaration, permanent injunction and recovery of possession. There are allegations of construction on the suit property. Hence, the local inspection, in my view, is permissible. The order passed by the learned court below, insofar as, the local inspection is concerned and insofar as appointment of learned advocate commissioner is concerned shall be restricted to the suit and shall not be treated to be in aid of the application under Order 39, Rule 2A of the Code.

The order impugned stands modified to the above extent. The finding that learned court had jurisdiction to entertain an application under Order 39, Rule 2A of the Code, is set aside. The petitioner shall be at liberty to file an objection to the misc. case, if not already filed and raise the point of maintainability. The said misc. case shall be heard on the point of maintainability, first. The suit shall proceed independently. The time for filing of the commissioner's report is extended upto August 14, 2023. Needless to mention, the local inspection shall take place in the presence of all the parties.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)