

14.03.2023

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**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 740 of 2022

Manik Chandra Ghosh & Ors.

versus

Mansha Ram Ghosh & Ors.

Mr. Gazi Raruque Hossain
Ms. Priyanka Mondal
... For the petitioner.

Affidavit-of-service filed in Court today be kept with the record.

This revisional application has been filed by the plaintiff-petitioner under Article 227 of the Constitution of India challenging Order No. 7 dated 28th February, 2022 passed by learned Civil Judge (Senior Division), Serampore, Hooghly in Title Suit No. 34 of 2022 rejecting the application under Order 39 Rule 7 of the Code of Civil Procedure.

The fact of the case is that the plaintiffs filed a suit for partition and injunction being Title suit No. 34 of 2022 before the learned Civil Judge (Senior Division), Serampore, Hooghly. In the said suit plaintiffs filed an application under Order 39 Rule 7 of Section 151 of the Code of Civil Procedure for local inspection commission. The said application was rejected by the learned trial court, hence this revision.

Ms. Priyanka Mondal, learned advocate for the plaintiffs-petitioners submits that the defendants are making illegal construction over the suit plot no. 4088 by violating the order of injunction which led to filing of application under Order 39 Rule 7 of the Civil Procedure Code for local inspection commission. However, the said application was rejected by the learned trial court without any cogent reason. In view of the aforesaid she prays for granting the prayer of the petitioner for local inspection commission.

It is found that the plaintiffs filed partition suit along with prayer for injunction in respect of several plots, including Dag No. 4088. It is not in dispute that the properties comprised within several plots being the subject matter of the suit are adjacent to each other. The learned trial court has rejected the application on the ground of difficulty in identification of plot no. 4088 by the Advocate Commissioner, since there are other joint properties too. Such finding of the learned trial court does not call for any interference.

Accordingly, the revisional application, being **C.O. 740 of 2022**, stands dismissed.

Connected application, if any, stands disposed of.

Interim order, if any, stands vacated.

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

(Bivas Pattanayak, J.)

question involves is whether this Court has the power to entertain the revisional application, and the same has been referred to the Special Bench, let this matter go out of list for the time being with liberty to the parties to mention as and when the same would be necessary.

(Prabuddha Sankar

Banerjee, J.)

The impugned order is hereby set aside.

The court should direct the handwriting expert to submit his report within two months and the present petitioner shall deposit the cost of the handwriting expert within 15 days from the date of this order.

Needless to mention, I have not gone through the merits of the case and any observation in the body of this order will not influence the learned Trial Judge in passing appropriate order.

Urgent Xerox certified copy of the order, if applied for, be given to the parties within seven days on proper application.

J.)

(Prabuddha Sankar Banerjee,