

Ct. No. 652
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2023

C.O. 1595 of 2019

Mrs. Malati Singh
-Versus-
Jharna Patra & Ors.

Mr. Santu Nandy **...For the Petitioner**
Mr. Rahul Karmakar **...For the Opposite Party**

This is an application under Article 227 of the Constitution of India filed by the petitioner against order No. 38 dated 8th April, 2019 passed by the learned 12th Judge, City Civil Court at Calcutta in Title Suit No. 1 of 2016. By the impugned order the learned Court below was pleased to allow the plaintiffs' application under Order XXXIX, Rule 7 of the Code of Civil Procedure in part.

It is the contention of the petitioner that the opposite parties herein as plaintiffs have instituted aforesaid Title Suit against the petitioner herein for declaration and injunction. The defendant/petitioner appeared in the said suit and filed written statement. In the said suit the opposite parties herein filed an application under Order XXXIX, Rule 7 of the Code praying for local inspection commission. The Court below allowed the said application for local inspection commission by the impugned order, in respect of point Nos. 2, 3 and 4 of the local inspection petition and was pleased to disallow point No. 1.

Being aggrieved by the said order Mr. Santu Nandy, learned Counsel appearing on behalf of the petitioner / defendant submits that the Court below acted illegally with material irregularity while allowing the application. In fact, the plaintiffs / opposite parties herein by way of local inspection commission made an attempt to collect evidence which is not permissible in the eye of law and accordingly

the Court below was not justified in allowing the said application. Furthermore, the order impugned is cryptic one and is not at all a speaking order and as such is liable to be set aside.

Learned Counsel appearing on behalf of the opposite parties submits that in the plaint, plaintiffs have specifically averred that they are enjoying certain amenities attached to their tenancy in their tenanted portion and defendants are trying to deprive them from enjoying those facilities and amenities and for which they have filed the suit as well as one application for injunction. The Court below after hearing the prayer for interim injunction, has been pleased to allow the ad interim injunction, restraining the defendants from interfering the tenancy right of the plaintiffs. He further submits that the points mentioned in the local inspection petition are very much germane for adjudication of the suit and also for elucidation of the matters in controversy. Accordingly, local inspection commission is very much needed and as such the Court below has not committed any mistake in allowing the said prayer made by the plaintiffs and as such the order impugned does not call for any interference.

I have considered the submissions made on behalf of both the parties. On perusal of the plaint it appears that in paragraphs 19, 20, 21 and 26 the plaintiffs have specifically averred that they are enjoying certain amenities in their tenanted portion and they have also alleged that the defendants are trying to deprive them forcibly from enjoying the said amenities. One of main prayer of plaintiff in the plaint is for declaration of their tenancy right along with amenities attached with the tenancy, which existed even

prior to execution of lease deed dated 16.10.2015 by defendant No. 1 in favour of defendant No. 2. The defendants in their written statement have controverted the said allegations levelled in the plaint in paragraphs 14 and 17 of their written statement. Plaintiffs' in their injunction application also made prayer for restraining the defendant No. 2 and her men, agents and associates to interfere with and obstruct the peaceful possession of the plaintiffs from use of common portion and common amenities in the suit premises including roof, staircase, passages in and around the building of the suit premises, courtyards, right to electricity, supply of water and all other common portions and amenities in the suit property. It further appears from the ad interim order passed by the Court below vide order dated 2nd January, 2016 that the Court below was pleased to restrain the defendants from disturbing the plaintiffs right of enjoying water supply and electricity by the lessee defendant No. 2.

Under Rule 7 of Order XXXIX of the Code of Civil Procedure, the Court is competent to make an order for the detention, preservation and inspection of any property, which is the subject matter of the suit or as to which a question may arise in the suit. Here admittedly Court below on prima facie satisfaction of plaintiff's case granted ad interim injunction on certain amenities allegedly attached with plaintiff's tenancy. Accordingly, appointment of commissioner for ascertaining the condition, feature and/or topography of the concerned suit property or any part thereof comes within the purview of present application.

Now in the above backdrop it appears that the points mentioned in the local inspection petition are germane

to the suit and such local inspection commission is needed for the purpose of elucidation of the real controversy between the parties and such local inspection commission cannot be said to be an attempt on the part of the plaintiffs to collect evidence. In such view of the matter, the order impugned is justified and does not call for any interference.

In such view of the matter, C.O. 1595 of 2019 is dismissed.

There will be no order as to costs

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)