

September 19, 2023
Sl. No.SL 1
Court No.19
s.biswas

CO 1650 of 2022
With
CAN 1 of 2023
Sk. Manjur Habib
vs.
Mantu Sekh and others

Mr. Somnath Roy Chowdhury
... for the petitioner
Mr. Indranath Mukherjee
Mr. Prasenjit Saha
... for the opposite parties

This matter was supposed to appear as item no.1. It was mentioned by Mr. Somnath Roy Chowdhury, learned advocate for the petitioner. Such mentioning was done upon notice. The listing section has made a mistake and has listed another matter in place of C.O. 1650 of 2022.

Hence, the court having realised its mistake, directed publication of supplementary list and fresh service of notice upon the learned advocate for the opposite parties.

Mr. Roy Chowdhury has filed a copy of the notice served and Mr. Indranath Mukherjee, learned advocate is appearing for the opposite parties.

This revisional application arises out of an order dated March 29, 2022 passed by the learned Civil Judge (Senior Division), Ranaghat at Nadia in Title Execution Case No.05 of 2019.

By the order impugned, the learned court below rejected the application under Order 39 Rule 7 of the Code of Civil Procedure filed by the judgment debtor

no.1 on December 24, 2021. By the said application, the judgment debtor prayed for restoration of possession in respect of the shop room, upon recall of the writ. The specific contention of the judgment debtor no.1/petitioner is that in execution of the decree in respect of the plaintiff's property in Title Execution Case No.05 of 2019 arising out of Title Suit No.90 of 2011, the judgment debtor was evicted.

There is no dispute with regard to the respective shares of the judgment debtor and the plaintiff. The plaintiff has five sataks in the suit property and the defendants have two sataks. The total measurement of the entire suit property was seven sataks.

Narrating the nature in which the execution had taken place, the application was filed for restoration of possession. In connection with the said application, an application for local inspection was also filed. The points for local inspection have been narrated in detail at pages 54 and 55 of the revisional application. Thereafter, another application for local inspection with additional points was also filed. The learned court below took up both the applications and rejected the same inter alia, holding that the judgment was passed on contested hearing in respect of the suit property on January 29, 2019. The judgment debtor did not challenge the decree by filing any appeal. The process server

had successfully executed the writ of delivery of the decretal property in favour of the plaintiff/decreed holder. The court did not find any reason to allow the local inspection. The point for local inspection appeared to be in the nature of evidence to be collected in aid of the application filed by the petitioner for restoration of possession. Under such circumstances, the court does not find any illegality in the order rejecting the application for local inspection.

However, the petitioner has alleged that he has been dispossessed from the two sataks of land and the shop room which was in his occupation as the decree was executed in respect of the incorrect schedule and not as per the schedule mentioned in the decree and plaint.

In my view, the application filed under Section 151 of the Code of Civil Procedure should be treated as an application under Order 21 Rules 100 and 101 of the Code of Civil Procedure, irrespective of the nomenclature. The same be registered as a misc. case. Thereafter, the Misc. Case shall be heard in accordance with law and disposed of. The parties will be entitled to file their respective written objections and adduce evidence in the said adjudicatory process. The adjudication should be in respect of the issue whether the execution had taken place in

terms of the schedule of the plaint and the decree or whether the petitioner had been dispossessed from his portion. Necessary order shall be passed.

The matter shall be disposed of within a period of four months from the date of communication of this order.

This court has not gone into the merits of the application which shall be decided on its own merits by the learned court below. The issues which have been raised by Mr. Roy Chowdhury in this revisional application, are left open to be decided by the learned executing court. The learned Court shall not be influenced by the order impugned.

The revisional application is thus disposed of.

The order impugned is modified to the above extent.

With the disposal of the revisional application, the application being CAN 1 of 2023 also stands disposed of.

All the parties and the learned Court are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)