

June 7, 2023
Sl. No.7
Court No.19
s.biswas

CO 1648 of 2023

Sabita Deb and others
vs.
Kajal Deb and another

Mr. Kaushik Dey
Mr. Sutirtha Das

... for the petitioners

Mr. Somnath Roy Chowdhury
Ms. Ananya Adhikari

... for the opposite party

The revisional application has been filed by the defendants in a suit for declaration and injunction pending before the learned Civil Judge (Junior Division), 6th Court, Howrah. The suit has been registered as Title Suit No.620 of 2021. The petitioners filed an application for local inspection under Order 39 Rule 7 of the Code of Civil Procedure. According to the petitioners, the local inspection was necessary in order to bring on record the local features of the suit property. Learned court below by the order impugned dated March 29, 2023 rejected the application filed by the defendants. The ground for rejection was that once an application for local investigation under Order 26 Rule 9 of the CPC had been rejected, a further application under Order 39 Rule 7 of the CPC on similar points, was not maintainable in law.

Learned advocate for the petitioners submits that the features of the property in question as to

whether there is any existing common passage or not should be brought on record upon inspection, measurement and consideration of the title deeds and by drawing a rough sketch map. Secondly, it is submitted that whether there is an iron gate or not should also be brought on record to adjudicate 1/10 share of the defendant in the the undivided property.

Mr. Roy Chowdhury, learned advocate appearing for the plaintiff/opposite party submits that the purpose of holding local inspection was to bring on record the existing condition of a property so that any mischief or natural deterioration caused to it later, would be known to the court. Hence, it is submitted that the prayer for local inspection in this case, if allowed, would amount to fishing out the evidence. Such prayer cannot be allowed and the parties should be allowed to prove their respective case at the trial.

This court in agreement with Mr. Roy Chowdhury to the extent that the point nos.1, 2, part of point no.3 and point nos.4 and 6 cannot be allowed. Point no.5 is not relevant for the purpose of adjudication of the suit.

Thus, learned court below rightly rejected the application by not allowing the local inspection on the above points. This court is also of the opinion that actual possession and measurement of the

areas enjoyed by the plaintiffs and the defendants through their respective title deeds should not be allowed to be ascertained by way of local inspection and no direction can be given to the Commissioner to draw a rough sketch map of the proportionate areas enjoyed by the parties.

Whether C Schedule property is a common passage or not or a part of the B Schedule property, is also a matter which has to be proved by the parties in the trial.

The only issue that can be allowed for local inspection is whether there is an iron gate between the respective areas of plaintiffs and the defendants.

The question as to whether any electricity is enjoyed by someone or not is not relevant at all.

This court is of the opinion that whether a common passage or pathway exists in an around the suit property can be ascertained. But, such inspection shall be made visually without entering into the question as to the nature of user of the passage or measurements of the said passage.

The other points are not allowed.

The revisional application is disposed of with direction upon the learned court below to appoint a learned Advocate Commissioner to ascertain the following:

- a) whether there is an iron gate between the boundary wall of the plaintiffs and the defendants;
- b) whether there is any passage or pathway in and around the suit property.

The report shall be filed by the learned Advocate Commissioner in the learned court below within four weeks from appointment. Thereafter, the learned court below shall proceed in accordance with law.

The revisional application is disposed of.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)