

Item No. 17
14.06.2023
Court. No. 19
GB

C.O. 1668 of 2023

Mou Banerjee @ Anjana Banerjee
Vs.
Prabir Chandra Das & Anr.

Mr. Arup Kumar Bhowmick

...for the Petitioner.

The petitioner is aggrieved by an order dated June 17, 2022 passed by the learned Civil Judge (Junior Division), 5th Court at Howrah. By the order impugned, an application under order XXXIX, Rule 7 read with Section 151 of the Code of Civil Procedure filed by the plaintiff in Title Suit No.198 of 2013 was partially allowed. The points for local inspection which were allowed are as follows:-

- “1. To go to the locale at Municipal holding no.50, Shambhu Halder Lane, P.O. Salkia, P.S.-M.P. Ghora, District-Howrah and identify the ‘A’ Schedule property.
4. To note the nature, character and condition of the ‘C’ Schedule property.
5. To note any other local feature or features.”

It is submitted by the learned Advocate for the petitioner that unless and until the common passage ‘C’ schedule is identified, measured and demarcated, inspection of the nature, character and condition of the ‘C’ schedule property, could not be allowed. It is further submitted by the learned advocate that identification of a passage when there was a boundary dispute could not be done by way of local inspection.

Having gone through the order impugned, it appears that the learned court below was conscious of the fact that the boundary dispute with regard to the ‘A’, ‘B’ and ‘C’

schedule property as enumerated in the plaint could not be ascertained by a local inspection. Rather, an expert commissioner was required to make a local investigation. The learned court also observed that the defendants did not deny the existence of the passage, but the question whether the 'C' schedule property was actually a part of 'B' schedule property or not, was a matter of trial and could not be ascertained by way of local inspection.

In the opinion of this Court, the learned court below was correct. The court just allowed the commission on the points, namely, the identification of the 'A' schedule property, the nature and character and condition of the 'C' schedule property and local features, if any. The local inspection on the above mentioned points would not amount to fishing out evidence rather the condition of the passage and the local features which are available in the 'A' schedule property shall be seen so that those facts are before the court and if any mischief or damage or destruction is caused to the said property during the pendency of the suit with regard to the above points, the court would be in a position to refer to the same.

Under such circumstances, the revisional application does not merit any consideration. The order impugned is upheld.

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.)