

13.06.2023
Court No. 19
Item no.20
CP

C.O. 1672 of 2023

Sunil Kumar Tiwari
Vs.
Subir Sen

Mr. Arnab Sinha
Mr. Dyutiman Banerjee
Mr. Amartya Basu

.....for the petitioner.

At the stage when Misc. Appeal No. 217 of 2017 is pending before the learned Civil Judge (Senior Division), 9th Court, Alipore, refusal to allow local investigation in order to ascertain the position and possession of the parties in respect of the property in question, has been challenged before the court. The learned lower appellate court was of the view that allowing an advocate commissioner for local investigation would only amount to fishing out of the evidence.

Misc. Appeal arose out of an order passed by the learned Trial Judge in Title Suit No. 96 of 2013 refusing to grant any order of temporary injunction. The suit is for specific performance of contract. The petitioner filed an application for an ad-interim order in the Misc Appeal. The ad-interim prayer was refused noting the discrepancy in the description of the suit property. The learned Civil Judge (Senior

Division) 9th Court, Alipore observed that when the learned Trial Judge upon perusal of the documents and the description of the suit property in the plaint and in the contract, was of the view that due the discrepancy in the description of the suit property, temporary injunction should not be granted in favour of the plaintiff, the question of grant of an ad-interim order would not arise.

Thereafter, the petitioner filed an application for local investigation in order to ascertain the position and possession of the parties in respect of the suit property and also for further evidence as to whether the two properties were identical or not. The said application was rejected in the Misc Appeal.

According to me, such issue shall be decided at the trial. The defence case is that possession of the property in terms of the contract had been given.

Under such circumstances, local investigation under Order 26 Rule 9 cannot be allowed at the stage of hearing of the Misc Appeal arising out of the order of refusal to grant temporary injunction. This court does not deem it necessary to interfere with the order impugned.

The learned Appeal Court is directed to dispose of the Misc. Appeal on the basis of the records, available documents and on the basis of the

pleadings of the parties within two months from the next date fixed.

It is made clear, that this order shall not prevent either of the parties from approaching the Trial Court in accordance with law, either for local inspection or local investigation, if the need arises in future.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)