

S/L 35
30.01.2023
Court No.652
SD

CO 2055 of 2021

Sri Mantulal Bera & Ors.
Vs.
Sri Bankim Majhi & Ors.

Mr. Bhudeb Chatterjee

...for the Petitioners.

Affidavit of service filed by the petitioners in court today be kept with the record.

Opposite parties are not represented.

Being aggrieved and dissatisfied with the order no.21 dated January 13, 2021 passed by the learned Civil Judge (Junior Division), 1st Court at Tamluk, Purba Midnapur in Title Appeal No.26 of 2016 arising out of Title Suit No.173 of 2021, the present revisional application has been preferred.

By the impugned order, learned court below was pleased to reject plaintiff's prayer for second local inspection commission in connection with selfsame property.

The petitioners contended that the petitioners as plaintiffs filed the aforesaid suit for declaration and injunction against the opposite party being Title Suit No.173 of 2021. Since the allegation of the plaintiffs/petitioners is that the opposite parties were using the private common passage of the plaintiffs leaving the public passage adjacent to the said common passage of the petitioners, they filed an application for local inspection commission and learned commissioner after conducting the commission work has

already submitted a report. Subsequently, the plaintiffs again filed another application for local inspection commission. However, by the impugned order, the said second local inspection commission prayer has been rejected by the court below on the ground that the local inspection commission in connection with the suit property has already been conducted and the report has also been submitted and the second application for local inspection commission is not entertainable and accordingly, it was rejected.

Learned counsel appearing on behalf of the petitioners submits that adjacent to plot nos.881 at the eastern side plot no.878 situates and over the said plot no.878, there lies a public pathway for the use of general public. The defendant without using the same has been forcefully using private land of the petitioners situated in plot no.881, 882, 883,886 and 888 although they have no right to use the same.

Accordingly, in order to ascertain the extent of said private plots, plaintiffs require to file a local investigation commission petition but inadvertently they filed the aforesaid application for local inspection commission. Accordingly, petitioners herein have not much grievance about the reasons for rejection of the prayer for second local inspection commission in connection with the impugned order. However, learned counsel appearing for the petitioners seeks liberty to file an application for local investigation commission before the court below in order to

ascertain the extent and area of said private plots of the plaintiffs.

In view of the above, as there is no merit in the revisional application, the revisional application being CO 2055 of 2021 stands dismissed.

The plaintiffs/petitioners will be at liberty to pray for local investigation commission, if any, before the trial court, and if any such application is filed before the trial court, learned trial court will dispose of the said application strictly in terms of merit, inter alia upon considering the justification and necessity of filing such application for the purpose of adjudication of real controversy between the parties in the suit and also without being influenced by any observation made herein by this Court.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)