

11.01.2023
Item No.8
Ct. No.7
CHC
(disposed of)

C.O. 2480 of 2022

**Kamal Pal & anr.
Vs.
Gobinda Ghosh & ors.**

Mr. Bhagbat Choudhuri
...for the petitioners

Ms. Baisali Ghoshal
...for the opposite parties

Mr. Bhagbat Choudhuri, learned advocate appearing for the petitioners assails that part of the impugned order dated 14th July, 2022, rejecting an application under Order 39 Rule 7 C.P.C., proposed by petitioners, who are not a party to the suit ended in *ex parte* decree.

Learned advocate appearing for the petitioners submits that the *ex parte* decree was granted by the court below without making impleadment of all the legal heirs left behind by erstwhile tenant, since deceased.

Upon gathering knowledge of the *ex parte* decree, petitioners have already filed a petition registered as Misc. Case No.205 of 2019, under Order 21 Rule 17 to 101 C.P.C read with Section 151 C.P.C. for determination of independent title disclosing therein their possession in the suit property.

In the pending Misc. Case, referred above, the petitioners filed an application praying for local inspection, which was rejected by the court below observing therein that it is an endeavour to fish out evidence, which is not permissible at that moment.

Per contra, Ms. Baisali Ghoshal, learned advocate appearing for the opposite parties submits that by a common order, the application filed under Order 39 Rule 7 C.P.C has been rejected simultaneously with rejection of a petition filed under Section 151 C.P.C., proposed by the decreeholders/opposite parties.

It is frankly disclosed by the opposite parties that execution proceeding has already been stayed, and when there is specific observation made by the court below directing the petitioners to adduce independent evidence first thereby declining to fish out evidence, the impugned order does not call for any interference.

Having considered the submission of both sides, it appears that there is already Misc. Case registered, as mentioned hereinabove, which is basically for determination of independent title, allegedly claimed by the petitioners.

Upon perusal of the impugned order, it appears that the claim of possession, as advanced by the petitioners has been directed to be proved first upon adducing evidence both orally and documentarily.

In a situation like this, it may be presumed that petitioners have been given liberty to adduce evidence in support of their claim of title and possession in the suit property.

After adducing evidence, if there be any occasion arises to seek for local inspection, that may be filed and revisited once again, subject to the discretion of the court below.

The revisional application is thus disposed of with the observation made hereinabove.

Parties are directed to make communication of this order to the court below.

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

(Subhasis Dasgupta, J.)