

10.08.2023
Court No. 19
Item No.06
CP

C.O. 2607 of 2023

Panchanan Mondal & anr.

Vs.

Kalyan Kumar Mondal & ors.

Ms. Pampa Dey (Dhabal)

...for the petitioners.

This revisional application has been filed by the defendants in Title Suit No. 243 of 2022. The defendants are aggrieved by an order dated April 5, 2023, passed by the learned Civil Judge (Senior Division), Diamond Harbour. Title Suit No. 243 of 2022 is a suit for partition. By the order impugned, the learned court below rejected an application under Order 39 Rule 7 of the Code of Civil Procedure. The petitioners had prayed for local inspection.

According to the petitioners, the local inspection was necessary in order to establish their claim that there was an existing temple on the suit plot and the same required repair. Such temple had been in the alleged property for more than 30 years. It was stated that the local people would come to worship in the said temple and such fact ought to have been brought on record.

The learned court below held that the commissioner had already completed the commission

work and submitted a report. The court found that, prima facie, there was no shortcoming in the report. With regard to the allegation of the petitioners that the commissioner did not include the fact of existence of a temple, the learned court observed that the correctness of the report of the learned commissioner could be debated upon when the report is sought to be relied upon.

From the written objection to the learned commissioner's report filed by the petitioners, it does not appear to the court that any specific contention had been made with regard to the nature, extent and location of such temple in the suit property. One sentence has been dedicated to such issue in the entire objection to the effect that the learned commissioner did not consider the submissions of the petitioners during the commission work, with regard to their 'puja' and offerings in the suit property.

The photographs filed by the petitioners did not show any mark of worship or construction of temple as found by the learned court below. According to the learned court, the existence of the temple was denied by the plaintiffs in the suit. Thus, the application for local inspection at the time when the commission work was complete, would not only

be irrelevant, but would amount to fishing out evidence.

The petitioners are at liberty to approach the learned court below and pray for cross-examination of the learned commissioner if permissible in law on the basis of their objection which is already on record.

The revisional application is disposed of accordingly.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)