

25.09.2023
Sl. No.36(DL)
srm

C.O. No. 2961 of 2023

Sri Ananda Mandal & Ors.

Versus

Sri Dilip Mandal @ Soumandal & Ors.

Mr. Sukanta Chakraborty,
Mr. Zubair Ahmed

...for the Petitioners.

The Court does not find any reason to interference with the part of the order impugned dated April 4, 2023, by which the learned Civil Judge (Senior Division),Khatra, Bankura, rejected the second application under Order XXXIX Rule 7 of the Code of Civil Procedure filed in connection with Title Suit No.54 of 2022.

The part by which the counter-claim was allowed, is not taken into consideration in this order. The suit is for partition. The shares of the parties as per the plaint case have been disputed and a counter-claim has been filed with respect to the shares claimed by some of the defendants.

It appears that an order of local inspection was granted by the learned court below and the report was filed. The age and the present condition of the buildings on the said plot were inspected as per the direction of the court. Thereafter,

another application was filed alleging that the local features had not been mentioned in the report. Further contention was with regard to the possession. The learned court below held that the first commission was held in the presence of both the parties. The report had recorded the condition of the suit property and in case the said report was taken as evidence, cross-examination could be held on the objections raised by the defendants.

Considering the nature of the suit and the controversies between the parties, further local inspection was not required as per the observations of the learned court below. In a suit for partition, local feature of the suit is not relevant. The local inspection in order to ascertain the exact condition of the suit property had already been held. The dispute is with regard to the shares in respect of the property, for which a second local inspection is not necessary.

The order impugned is upheld. The petitioner is at liberty to address the learned court below on all issues raised in this revisional application at the time of hearing of the suit, if permissible in law.

The revisional application is dismissed.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)