

September 12, 2023
Sl. No.6
Court No.19
s.biswas

CO 2973 of 2022

Goutam Mondal
vs.
Sri Nirmal Mondal and others

Mr. Sukumar Ghosh
Ms. Moumita Ghosh

... for the petitioner

This revisional application arises out of an order dated December 16, 2021 passed by the learned Civil Judge (Senior Division), 2nd Court at Barasat, North 24 Parganas, in Title Suit No.850 of 2016.

By the order impugned, an application under Order 39 Rule 7 of the Code of Civil Procedure was rejected. The suit was for partition. A property consisting of 23 rooms made of bamboo with tile shed and rough brick flooring, four brick-built shops with asbestos shed with concrete flooring and iron gate and one more shop room made of bamboo with cemented flooring, were sort to be partitioned. The 28 rooms formed part of the suit property. The entire suit property was spread over 20 cottahs of land.

The learned court held that in the absence of specification as to which of the two rooms, verandah, kitchen, privy were required to be repaired amongst the 28 rooms in the suit premises, the application under Order 39 Rule 7 of the Code of Civil Procedure could not be allowed. Consequently, the application for repair was also rejected.

It appears that the petitioner has mentioned that the condition of the rooms, kitchen, privy and floor of the petitioner's portion should be inspected, as the same was in a dilapidated condition and needed repair. A commissioner should be appointed in order to inspect the portion, draw a sketch of the room, kitchen, privy and floor as also note the other local features. It is contended by the petitioner that the sketch map attached to the application for local inspection indicates that most of the property is tenanted. A portion is occupied by Nirmal Mondal and other portions by Dilip Mondal and Goutam Mondal.

Perused the records. The application for repair does not indicate the nature of damage and also the position of the damaged property in question, in the entire 20 cottahs. In the application for repair, a general statement has been made to the effect that the portion occupied by the petitioner was badly damaged and required repair.

This court is of the view that the learned court rightly exercised discretion in not allowing the application for local inspection in the absence of specific statements with regard to the nature of damage and the position of the suit property over the entire 20 cottahs. Moreover, two years have passed

and the current status of the alleged property is not known.

Under such circumstances, the order impugned does not require any interference. However, as the court had rejected the application only on the ground of lack of specifications with regard to the nature and position of the portion of the property occupied by the petitioner, the petitioner may approach the learned court below at any later stage by filing appropriate applications for inspection and as also repair with proper details and specifications. The applications shall be heard by the learned court below in accordance with law, upon considering the nature of urgency, and the extent of repair involved, upon allowing the opposite parties to contest the proceedings.

This order shall not be construed as a direction upon the learned court below to allow the subsequent applications, if filed. The learned court below shall deal with the issues in each of the applications on their own merits, independently and on the basis of the records and materials available.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)