

20.3.2023
16
Ct. no. 652
sb

C.O. 3003 of 2017

Sk. Abdul Hai
Vs.
Sk. Nabab & Ors.

Mr. Sujit Saha ...for the petitioner

Mr. Amit Kumar Das
Mr. Rupsa Chakraborty ...for the Opposite parties

Being aggrieved and dissatisfied with the order no. 30 dated 19.6.2017 in J. Misc. case no. 08 of 2017 passed by the learned Civil Judge (Junior Division), 3rd Court, Tamluk arising out of Title suit No. 72 of 2016, the present application under Article 227 of the Constitution of India has been preferred.

The petitioner contended that the petitioner as plaintiff filed aforesaid suit and in the said suit, they have also filed an application seeking injunction and the court below granted temporary injunction on 1.12.2016 in favour of the petitioner herein/plaintiff. During continuance of the said injunction application, the defendant/opposite party herein violated the order of injunction and for which the petitioner/plaintiff initiated contempt proceeding under Order 39 Rule 2A of the Code of Civil Procedure being J. Misc. Case no. 8 of 2017. Now in order to prove the petitioner's allegation of contempt of

court's order, the petitioner/plaintiff filed one application under Order 39 Rule 7 of the Code of Civil Procedure for making local inspection. While said petition for local inspection commission was fixed for hearing, the opposite party herein has also filed an application for incorporating two additional points for inspection. Learned court below after hearing both the parties, allowed the schedule for inspection work as prayed for by the petitioner as well as two additional points of inspection work as made by the defendant/opposite party in the said application.

Being aggrieved by the said order by which the court below has allowed the defendant's additional points for local inspection commission, the petitioner has filed the present application.

Learned counsel for the petitioner argued that such points as agitated by the defendants are not at all required for the disposal of the pending issues and the court below has acted with material irregularity in allowing the said two additional points for inspection. The court below has not applied its judicial mind and as such the said portion of the order is liable to be struck down.

I have perused the additional two points as prayed by the defendants in his application which relates to a direction upon the Commissioner to see whether the plaintiff's house property is bounded by boundary wall

over R.S. plot no. 1321 and whether there is any sign of cutting log within the plaintiff's boundary wall.

During course of hearing, learned counsel for the petitioner failed to convince as to how those two additional points if allowed to be inspected as a local feature by the local inspection commissioner along with the schedule of commission work as sought for by plaintiff, the petitioner is going to be prejudiced. In addition to the points for local inspection commission as prayed by the petitioner/plaintiff, if the said two points for local inspection commission is also conducted by the same Commissioner and if the detailed topography of the suit property comes before the court by way of local inspection commission, neither party will have a cause to prejudice, rather it would help the court to come to a finding.

However, I find that the court below, while passing the order did not ask the defendant to bear the proportionate cost of the commission work, though he had also allowed the additional points for inspection as prayed by the defendant.

In view of above, the impugned order is modified only to that extent that the cost of local inspection commission will be borne by both the parties in equal share. The other part of the order impugned shall remain uninterfered.

Accordingly, C.O. 3003 of 2017 is disposed of.

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

(Ajoy Kumar Mukherjee, J.)