

13.2.2023
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Ct. no. 652
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CO 4390 of 2018

Gopal Kumar Sanei
Vs.
Jayanti Dholey

Mr. Kushal Chatterjee
Mr. Shibjit Mitra ...for the Petitioner

Mr. Tanmoy Chowdhury
Ms. Ritoprita Ghosh ..for the Opposite party

Being aggrieved and dissatisfied with the order no. 7 dated 30.11.2018 passed by the learned Civil Judge, Junior Division, 4th Court, Serampore in Title Suit no. 462 of 2018, present revisional application under Article 227 of the Constitution of India has been preferred.

Petitioner contended that the opposite party/plaintiff instituted aforesaid suit for declaration that “A” schedule property belongs to the plaintiff and for an injunction restraining the defendant from making any disturbance in the personal property of the plaintiff or making use of the said personal property of the plaintiffs “A” schedule property or making any trouble in the ingress and egress of the plaintiff through his aforesaid personal property along with other reliefs. The plaintiff also filed an application for temporary injunction.

Learned court below granted ex parte ad interim order of injunction against which the defendant/opposite

party preferred revisional application being C.O. 3778 of 2018. By an order dated 1.11.2018, this court modified the order of status quo, while disposing aforesaid revisional application which was in force till 27th November, 2018. Subsequently, the plaintiff's application under Order XXXIX Rule 1 and 2 along with his application for local inspection commission under Order XXXIX rule 7 was taken up for hearing by the learned trial Judge and after hearing both the parties, learned trial judge was pleased to pass the impugned order by which court below directed both the parties to maintain status quo with regard to the possession, nature and character of the suit property till disposal of the suit and also allowed the plaintiff's prayer for local inspection commission.

Being aggrieved by a portion of the impugned order dated 30.11.2018 to the extent by allowing application for local inspection, the defendant/petitioner has preferred this revisional application. It is submitted by the learned counsel for the petitioner that learned court below has failed to appreciate the fact that on two earlier occasions, the petitioners have been able to show that there is an existence of iron gate and pad locks put on the iron gate has been removed with the assistance of police authorities and as such there is no requirement of local inspection commission. However, learned counsel for the petitioner submits that even then, if the local inspection

commission is held as per points mentioned in the local inspection commission petition, then the defendant/petitioner does not have any objection but the court below while allowing the prayer for local inspection commission, has added certain extraneous points without assigning any reasons in respect of which the petitioners have objection as it may create an opportunity to plaintiff to collect evidence, which is not permissible.

Learned counsel for the opposite party submits that if the local inspection commission is held as prayed by them in terms of the schedule of the local inspection commission petition, their purpose for commission will be served.

On perusal of the schedule of the local inspection commission, it appears that six points have been noted in the petition for local inspection commission and learned court below has formulated and modified four points for local inspection commission.

Having considered the facts and circumstances of the case and on the basis of consent given by both the parties, let the revisional application being C.O. 4390 of 2018 is hereby disposed of with a direction upon the local Inspection Commissioner as appointed vide order dated 30.11.2018, to execute the commission work strictly in accordance with six points mentioned in the schedule of the local inspection commission dated 12.11.2018, being point no. (a) to (f) and to submit a report within a period

of four weeks from the date of communication of the order before the court below.

I want to make it clear that I have not made any comment about the merits of the case or merit of the application for inspection and this application has been disposed of on the basis of meeting of the minds of the parties.

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.)