

01.05.2024  
Ct. No. 19  
Sl. No.25  
Cp

C.O. No. 1426 of 2024

Sri Raja Mukherjee  
Vs.  
Sri Utpal Sarkar @ Bappa

Mr. A. K. Acharyya  
Mr. Kushal Chatterjee  
Mr. Subir Banerjee  
Mr. Debrup Choudhury  
Ms. Moumita Das

... for the Petitioner.

Mr. Sounak Bhattacharya  
Mr. P.D. Mukherjee  
Ms. Ankit Das

.....for the Opposite Party.

1. By order dated April 4, 2024, the learned Civil Judge (Junior Division) Serampore allowed an application under Order 39 Rule 7 of the Code of Civil Procedure in connection with Title Suit No. 434 of 2021. The learned court appointed a learned advocate commissioner to make a local inspection on the following points:-

“1. To go to the locale of the (Ka) and (Ka-1) schedule property and to prepare a rough sketch map of the same and to report about the same.

2. To note the position of the (Ka) and (Ka-1) schedule property and to report about the same. There is any electric meter in the (Ka-1) suit property.

3. To note the other local features in respect of which the attention of the learned Commissioner will be drawn by the learned Advocate for the Plaintiff/Petitioner at the time of commission work.”

2. Mr. Chatterjee, learned advocate for the petitioner, submits that the second application for local inspection filed in order to fish out evidence, could not be allowed. On an earlier occasion, this court had disallowed a similar application. Attention of this court was drawn to the order dated February 21, 2024, passed in C.O. 426 of 2024. This court was of the view that merely on the threat of dispossession a local inspection could not be allowed. However, liberty was granted to the opposite party to file appropriate applications if the situation so demanded. The relevant portion is quoted below:-

“The suit was filed with the allegation that the defendants along with their men and agents were trying to dispossess the plaintiff from the tenanted property illegally and forcefully. The allegations of threat and intimidation have also been made. Apprehending an illegal eviction, the suit was filed. In the plaint, there is no allegation that the defendants were trying to change the nature and character of the tenanted portion either by raising any construction or by demolishing the same. The plaintiff has been sufficiently protected by the order of injunction. The learned court has directed specifically that the defendants and their men and agents would be restrained from disturbing the plaintiff in respect of the property in question and they should not be disturbed in any way. When such protection has been given and when there is no allegation that attempts have been made to dispossess the plaintiff from the property by either demolishing or by interfering with the structure which the plaintiff is occupying, the question of local inspection would not arise.

This order has been passed at a stage when the situation was not mature for a local inspection. There has to be some reason for the court to direct the local inspection. In this case, when the plaintiff has been sufficiently

protected and when there are no allegations of any interference by the landlord with the property in question, the order is premature. If the occasion so arises in future, the plaintiff can renew his prayer, but at this stage the order impugned with regard to local inspection is erroneous and is thus set aside.

However, it is made clear that the order of injunction shall be complied with by the parties, unless it is varied, vacated or modified by a superior court. ”

3. Mr. Chatterjee, submits that the situation remained the same. Nothing changed, but taking advantage of the liberty granted by the court, the plaintiff went from strength to strength and filed another frivolous application. Pointing out to the points of commission, Mr. Chatterjee submitted that the location and local features of the property would have no relevance to the lis involved.
4. Mr. Bhattacharya, learned advocate appearing for the opposite party/plaintiff, submits that paragraphs 4, 5, 9 and 10 of the application for local inspection, clearly mention that the petitioner was trying to raise a construction by the side of the property which was under the plaintiff's possession (Ka-1). As a result of which, the plaintiff's portion was sustaining damage. The window panes and other glass fixtures and fittings had broken down.
5. I have perused the statements made in paragraphs 4, 5, 9 and 10. I agree with Mr. Chatterjee that an advocate commissioner cannot figure out whether the nature of construction on Ka schedule property was

causing any damage to the structural stability of the (Ka-1) schedule property or whether the fittings and fixtures therein were getting damaged. Whether the impact of the construction on Ka schedule property was causing damage to the Ka-1 schedule property, would require an expert's opinion.

6. I also agree with Mr. Chatterjee to the extent that the points for local inspection do not have any relevance. However, the allegation of the tenant/plaintiff that the construction is being raised in such a manner that there is every chance of damage and destruction to the (Ka-1) schedule property, cannot be overlooked. The possession of the plaintiff/opposite party has been protected by an ad interim order of injunction. Thus, the purport and spirit of such order was that till the disposal of the suit, the opposite party should be able to enjoy the Ka-1 schedule property, with free ingress and egress. The property should be safe and intact.
7. Thus, the inspection is required to be conducted by an engineer and not by a learned advocate. The order impugned is modified. The learned court is directed to appoint an engineer from the panel of engineers maintained by the Uttarpara Kotrung Municipality and the points for local inspection will be as follows:-
  - a) Whether any construction is being carried out by the petitioner on the Ka schedule property, just beside the premises in the occupation of the opposite party.

Whether any obstruction had been caused to the enjoyment of Ka-1 schedule property.

- b) If so, what was the extent and nature of such construction.
  - c) The distance between the construction carried out in (Ka) schedule property and the (Ka-1) schedule property.
  - d) Whether the extent of construction would in any way harm the structural stability or cause any damage to the Ka-1 schedule property.
  - e) What measures should be adopted by the petitioner in order to ensure that the Ka-1 schedule property does not sustain any injury till the disposal of the suit.
8. A report shall be prepared as per the points framed hereinabove. The inspection shall be made with notice to the parties and the parties shall jointly bear the cost of such inspection.
  9. The learned court shall fix the date for filing of the report, as per convenience. The inspection already carried out by the learned advocate commissioner shall not be taken into consideration.
  10. The revisional application is accordingly disposed of. There shall be no order as to costs.
  11. Parties are to act on the server copy of this order.

**(Shampa Sarkar, J.)**