

21.05.2024
Ct. No. 19
Sl. No.26
Cp

C.O. No. 2628 of 2023

Gautam Maity
Vs.
Mantu Barik

Mr. Sandip Das

... for the petitioner.

The revisional application arises out of an order dated May 16, 2023, passed by the learned Civil Judge (Junior Division), Kakdwip in Title Suit No. 24 of 2021.

By the order impugned, the learned court rejected an application under Order 39 Rule 7 of the Code of Civil Procedure. The learned court held that the points for local inspection were in respect of non-suit plots and should not be allowed. Moreover, the controversy raised in the written statement would require measurements which could not be achieved by way of a local inspection.

Mr. Das, learned advocate appearing for the petitioner, submits that the suit was filed by the plaintiff, claiming right, title and interest in respect of a passage which was also used by the defendant for ingress and egress. The defendant had an easementary right in respect of the said passage.

In my view, a local inspection to bring on record the local features of the said property, is irrelevant. The claim of right of easement would have to be proved by evidence.

Such onus would have to be discharged by the defendant, once the plaintiff proves his right, title, interest and possession in respect of the property in question.

Under such circumstances, the revisional application is dismissed. There is no scope for any interference with the order impugned.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)