

20th March, 2024
(D/L No.21)
(SKB)

C.O.3552 of 2018
With
CAN 1 of 2019 (Old CAN 3753 of 2019)
(not in file)

Hemanta Kumar Manna
Versus
Tapas Kumar Chakraborty
@ Pintu Chakraborty

Mr. Dhananjay Banerjee,
Ms. Oindrila Ghosh,
Ms. Sangeeta Singh

... for the petitioner.

1. Mr. Banerjee, learned advocate for the plaintiff/petitioner has filed a receipted copy of letter dated 13th March, 2024 showing service of notice upon the learned advocate for the opposite party. Despite such service, none appears on behalf of the opposite party. Accordingly, this court proposes to hear the instant revisional application in absence of the opposite party.
2. In course of hearing, Mr. Banerjee, learned advocate for the plaintiff, revisionist at the very outset draws attention of this court to the Annexure P-1 being the copy of the plaint as filed before the learned trial court, Annexure P-3 being the copy of the application as filed under Order XXXIX Rule 7 of the C.P.C. before the Trial court vis-a-vis the certified copy of

the impugned order. It is contended that from the schedule of the application for Commission, it would reveal that petitioner/plaintiff made an endeavour to bring on record the present state of affairs as prevailing over the suit property for effective adjudication of the suit in which the petitioner/plaintiff has prayed for declaration of title in respect of the suit property as well as permanent injunction restraining the defendant from interfering with the peaceful possession of the petitioner/plaintiff in respect of the selfsame property.

3. Mr. Banerjee further argued that while disposing the said application for commission, trial court has practically come to a decision that the plaintiff has no *locus standi* to file the said petition, since one Pari Charan Chakraborty had no right, title and interest over the suit plot since he had already transferred the said suit plot during his lifetime by executing a deed of conveyance.
4. On perusal of the entire materials as placed before this court and after hearing the learned advocate for the petitioner, it appears to this court that while rejecting the petitioner's/plaintiff's application for appointment of an Advocate Commissioner, trial court has practically assigned no reason as to what

prevented him in allowing such application for appointment of Advocate Commissioner.

5. It appears to this court that since before the trial court, the plaintiff/revisionist had apprehended that his right, title and possession in respect of the suit property may be endangered at the instance of the defendant, he prayed an Advocate Commissioner may be appointed for doing the work by way of Commission, which has been mentioned in the schedule of the application for commission.
6. It appears to this court that the prayer as made by the plaintiff before the trial court is very much innocuous one and the same deserves to be allowed.
7. As a result, the instant revisional application succeeds. Consequently, the impugned order being Order No.28 dated 3rd July, 2018 as passed in Title Suit No.412 of 2015 by the learned Civil Judge (Junior Division), 2nd Court at Chandernagore, Hooghly is hereby set aside. Consequently, the plaintiff's application under Order XXXIX Rule 7 read with Section 151 C.P.C. for local Inspection Commission stands hereby allowed.
8. Liberty is given to the plaintiff/revisionist to deposit the Advocate Commissioner's fee as assessed by the trial court within the time fixed by the trial court. It is further directed that the trial court shall ensure

the completion of commission work in one sitting only and the Commissioner's report is to be submitted within a period of fortnight from the date of issuance of writ of commission by the trial court.

9. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings after compliance of all necessary formalities.

(Partha Sarathi Sen, J.)