

03.04.2024
Item No.18
gd/ssd

CO/3466/2023
SOUMEN MUKHERJEE
VS
ALOKE MUKHERJEE @ ANR.

Mr. Nonigopal Chakraborty
..for the petitioner.

Affidavit of service filed in Court today is taken
on record.

It has been submitted by the learned Advocate
for the petitioner that the opposite parties have been
duly served.

This application under Article 227 of the
Constitution of India is at the instance of the
defendant no.1 and is directed against an order
dated September 20, 2023 passed by the learned
Civil Judge (Junior Division), 6th Court, Howrah in
Tile Suit No.258 of 2023.

By the order impugned the application filed by
the plaintiff/opposite parties under Order XXXIX
Rule 7 of the Code stood allowed.

The learned Advocate appearing for the
petitioner submits that the application for local
inspection was filed only for the purpose of fishing
out evidence.

This Court finds that the opposite parties filed
a suit for declaration of title and for permanent

injunction restraining the defendants from disturbing the peaceful possession of the plaintiff over the suit property. In such a suit the application for local inspection under Order XXXIX Rule 7 of the Code was filed for noting down the position of the A and B Schedule property and also to note down the present topography and nature and character of the suit property.

After going through the points on which the local inspection was sought for, this Court is of the considered view that the same was with an object to fish out evidence which is not permissible by holding local inspection.

In view thereof, the impugned order calls for interference.

The order dated September 20, 2023 passed by the learned Civil Judge (Junior Division), 6th Court, Howrah in Title Suit No.258 of 2023 is set aside.

CO 3466 of 2023 stands allowed.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities

(HIRANMAY BHATTACHARYYA, J.)