

18.01.2024
Item No.4
gd/ssd

CO/3520/2023
ESTATE OF GOPAL CHANDRA GHOSH
VS
PURNIMA GHOSH AND ORS.

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

The Order No.70 dated August 29, 2023 passed by the learned Judge, 2nd Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No.175 of 2016 is under challenge in this application under Article 227 of the Constitution of India at the instance of the plaintiff.

By the said order the application under Order XXXIX Rule 7 of the Code of Civil Procedure read with Section 151 of the Code filed by the defendants was allowed.

Mr. Chatterjee, learned advocate appearing for the plaintiff/petitioner submits that this is a suit for eviction on the ground of reasonable requirement of the plaintiff/deity and Premises No.9, Ramtanu Bose 2nd Lane, being the only property of the deity, the learned trial judge ought not to have directed inspection of a property which does not belong to the deity. He further submits that the learned trial judge while allowing the said application did not consider

the fact that the personal requirement of the trustees of the deity which was pleaded in the original plaint was deleted by way of an amendment. He, therefore, submits that the inspection of Premises No.48/2A, Ramtanu Bose Lane is not necessary for the purpose of deciding the disputes between the parties.

It appears from the record that the plaintiff/petitioner herein filed an application for inspection in respect of one thakurghar on the second floor of Premises No.48/2A, Ramtanu Bose Lane under PS-Girish Park and the learned Commissioner after holding commission has already submitted her report in respect thereto. It further appears from the record that on February 7, 2019 an application was filed under Order XXXIX Rule 7 of the Code by the defendants in respect of inspection of entire Premises No.48/2A, Ramtanu Bose Lane under PS-Girish Park and the learned court below after hearing both sides allowed such prayer by an order dated 24th June, 2019. Thereafter an application under Section 151 of the Code was filed by the present petitioner for modification of the order dated 24th June, 2019 on the ground that the suit property is a trust property and is separate from the personal properties of the plaintiff and, therefore, such property need not be inspected by the Commissioner.

The learned trial judge after going through the records passed an order dated 7th February, 2019 observing that such properties are also trust properties which are required to be inspected by the Commissioner to come to a conclusion in respect of the dispute between the parties. On the basis of such specific finding, the learned trial judge rejected the application under Section 151 of the Code vide order dated November 7, 2019.

The petitioner herein preferred a Civil Order No.376 of 2020 challenging the aforesaid orders dated 24th June, 2019 and November 7, 2019.

A coordinate Bench by an order dated 6th February, 2020 dismissed the said civil order upon holding that the learned trial judge did not commit any error in allowing the application for holding local inspection.

The fact remains that the Commissioner, namely, Biltu Ghosh inspected the premises in terms of the points contained in the application for local inspection filed by the defendants on 7th February, 2019. However, due to sad demise of the learned Advocate-Commissioner, no report has been filed before the court.

The issue as to whether the entire Premises No.48/2A, Ramtanu Bose Lane under PS-Girish Park should be inspected has already been decided by the

learned trial judge vide orders dated 24th June, 2019 and November 7, 2019 which stood affirmed by an order dated 6th February, 2020 passed in CO 376 of 2020.

This court is, therefore, of the considered view that the inspection of the entire Premises No.48/2A, Ramtanu Bose Lane under PS-Girish Park has to be done by a new Commissioner as the earlier Commissioner who inspected the premises has in the meantime died.

By filing the instant application for local inspection, the opposite party has only sought for local inspection by a Commissioner on the points which were already allowed earlier as observed hereinbefore. This court therefore holds that the learned trial judge rightly allowed the application for local inspection.

The order impugned do not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.

The learned Commissioner is directed to hold the commission in terms of the order dated 29th August, 2023 and submit a report as directed by the said order.

The certified copy of the impugned order filed in court today by Mr. Chatterjee is taken on record.

CO 3520 of 2023 stands dismissed accordingly.

There shall 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.)