

May 7, 2024
Sl. No.A 117
Court No.19
s.biswas

CO 3698 of 2023

Shyamal Kumar Maity and another
vs.
Sri Asto Chandra Golui and others

Mr. Debarshi Brahma

... for the petitioners

1. The revisional application arises out of an order dated August 31, 2023 passed by the learned Civil Judge (Junior Division), 4th Court at Howrah in title Suit No.802 of 2016.
2. By the order impugned, the learned court rejected an application for local inspection, which was filed under Order 39 Rules 7 and 8 read with Section 151 of the Code of Civil Procedure. According to learned court, the prayer for local inspection and the points stated therein were totally misconceived. The questions whether the plaintiffs were constructing on the land occupied by the defendants. Whether the plaintiffs were in possession of the area and what were the local features of the area occupied by the plaintiffs were hardly relevant for determination of the dispute involved in the suit for declaration of the plaintiffs' right in respect of the suit property.
3. For adjudication of the right of the plaintiffs in respect of the suit property, an inspection to note down the topography of the property would not

be necessary. The plaintiffs would have to prove their own case with regard to the right, title and interest in the property.

4. Point B of the schedule for local inspection, was also not relevant at all. Whether the plaintiffs were in possession of the suit property, would have to be proved by adducing evidence. The defendants had filed a counter claim for declaration that they were in absolute possession of the suit property. Thus, the case and counter case of the parties should be proved by leading evidence. Allowing the application for local inspection, in my view, would amount to allowing the plaintiffs to fish out evidence. The learned court passed the correct order, upon appreciation of the facts and law.
5. The revisional application stands dismissed.
6. There shall be no order as to costs.

(Shampa Sarkar, J.)