

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI
APPELLATE SIDE**

10.04.2024
SL No.07
Court No.3
m.nas

C.O. 152 of 2023

**Sri Gopal Berlia & Anr.
Vs.
Smt. Romi Chiraniya & ors..**

.

Mr. Anirban Banerjee

..... for the petitioners

Mr. Debashri Dhar,

.... For the respondents.

The Instant CO has been preferred against the order dated 59 of 2023 passed by the Learned Special Judge (Junior Division Siliguri) in connection with title suit No. 161 of 2022 thereby rejecting the application under order 39 Rule 7 of the Code of Civil Procedure filed by the present petitioner.

Learned Advocate for the petitioner submits that the petitioner, being a plaintiff filed a suit of declaration and injunction before the Learned Civil Judge, concerned. The suit was contested by the defendant by filing written statement.

The proforma defendant No. 7 has contested by the suit by filing separate written statement.

Learned Advocate for the petitioner submits that the allegation was made in the plaint that the

defendant has started construction over the suit land (owned by defendants) by violating the Municipality Rules. An application was filed by the plaintiff/petitioner to appoint a local inspection Commissioner for the purpose inspect the suit property. The prayer of the plaintiff was turned down by the Learned Civil Judge, on the ground that the plaintiff cannot be allowed to collect the evidence through the way of report of inspection commissioner.

Learned Advocate for the petitioner submits that the observation of the Learned Civil Judge, Junior Division is illegal in the eye of law. The purpose of local inspection is to ascertain the real nature and character of the suit property, and for preservation of the suit property. He further submits that the points for legal inspection has been mentioned in the body of the application, wherefrom it would not be revealed that the plaintiff wants fish out any evidence. In support of his contention he cited a decision in Orissa High Court reported in **Subal Kumar Dey Vs. Purna Chandra Giri (1989 SCC ONLIN, Ori -5) and Krishan Sharma Vs. Maya Mukherjee (2023 SCC Online CAL 1267)**. He submits that the prayers in the application for local inspection is general in nature so the impugned order passed by the Learned Civil Judge concerned

is liable to be set aside and the local inspection commission may be ordered to inspect the suit property on the points mentioned in the body of the application itself.

Learned Advocate for the Opposite parties raised strong objection and submits that the impugned order passed by the Learned Civil Judge, is legally correct. The plaintiff only intends to collect the evidences by the way of the report of the local inspection commission but it is not permissible in the eye of law.

He contradict the ratio of law laid down by the Hon'ble Orisa High Court and Hon'ble Calcutta High court cited by the petitioner/defendants submits that in the cited case before the Hon'ble High Courts there was allegation of violation of ex parte order by the defendant, thus for the purpose of preservation of the order of the court, the commissioner was allowed to be inspected the suit property.

Heard the Learned Advocate perused the materials on record only point of law involved in this matter is that whether the Learned civil Judge, is justified to hold that by the way of inspection the plaintiff will collect the evidence in this case.

From the plaint it appears that the plaintiff have filed a suit for injunction in respect of the suit property admittedly owned by the defendant,

wherein the defendant are alleged to have been committed and unauthorized construction violating of municipal Rules. The suit contain the prayer for decree of declaration that the construction in the suit property was made in violation of the Municipality Rules. The prayers in the plaint is not in accordance with the provision of Section 34 of Specific Relief Act; However there are two schedules appended with the plaint which disclose the Plot No, area address of the suit land but did not disclose the present nature and character of the suit property.

The local inspection was sought for on the basis of 4 points. A) nature and character of the suit land. B) topography of the suit land. C) length and breathe of vacant spaces left in suit land. D) to draw a rough sketch map showing the scheduled land.

If the report of the inspection commission is filed on the basis of the said application, it must have detailed about the present nature and character of the said scheduled land which was not disclosed in the plaint itself. If the topography suit land was detailed by the commissioner by prepared rough sketch, that can itself discover the suit land as well as other adjoining lands. Which is unknown in the suit itself.

So far as the point No. C is concerned, it appears that the length and breathe of vacant spaces left in

the scheduled land was required to be inspected by the local inspection commission, but the said point was not specified. I make it clear the point No. C cannot be inspected as it was not specified as to which portion of the land has to be inspected.

The facts of the cited cases of Hon'ble High Courts are not at all similar to that of the present case, thus they are distinguishable.

Considering the same, it appears to me that the Ld. Civil Judge (Junior Division) concerned has correctly considered the prayer of the application filed under order 39 Rule 7 of Code of Civil Procedure and has correctly turned down.

I find no justification to entertain the CO and the same is disallowed.

Thus, the CO be disposed of.

Connected applications, if pending are also disposed of.

(Subhendu Samanta, J.)