

04.07.2025
Item ML 1166
Court No.6.
AB

C. O. 366 of 2025

**Mokbul Hossain
Vs
Robiul & Others**

Mr. Oishik Chatterjee,
Mr. Imdadul Haquefor the Petitioner.

Mr. U. A. Dewan,
Ms. Sabnam Laskar,
Mr. A. Dewanfor the Opp. Parties.

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order no.13 dated 03.01.2025 passed by the learned Civil Judge (Sr. Division), Chanchal, Malda in Partition Suit No.96 of 2024.

By the order impugned, the application under Order 39 Rule 7 of the Code of Civil Procedure stood allowed.

Learned advocate appearing for the petitioner submits that the petitioner sought to fish out evidence by way of local inspection.

Mr. Dewan, learned advocate appearing for the opposite party submits that holding local inspection on the points mentioned in the Schedule of the said application is absolutely necessary for the purpose of eliciting the disputes involved in the suit. He further

submits that the Commissioner after holding inspection has already submitted a report.

The issue that arises for consideration is whether a local inspection should be allowed in a suit of this nature.

The petitioner filed a suit for partition. In such a suit, the opposite party herein filed an application for appointment of a Commissioner to report as to the existing condition of the suit property; whether any house of the plaintiff is in existence in the suit property; whether any house of the other defendants are in existence on the suit property; whether any house of the present defendant is in existence on the suit property and whether the house wherein the defendant is residing, is fit for habitation.

After going through the points for local inspection, this Court finds that the same are not necessary for the purpose of eliciting the disputes involved between the parties. By way of local inspection, the opposite party sought to collect evidence in a suit, which is not permissible.

For such reason, the order impugned is set aside.

C. O. No. 366 of 2025 stands allowed.

There shall be no order as to costs.

(Hiranmay Bhattacharyya, J.)

