

February 20, 2025
Sl. No.27
Court No.6
s.biswas

CO 601 of 2025

Rajlakshmi Syam
vs.
Sharbani Nandi and others

Mr. M. P. Gupta
Mr. Debajyoti Deb
Ms. Anu Shaw
Ms. Somdyuti Pareskh
Ms. Antara Panja
Ms. Shinjita Ray

... for the petitioner

Mr. Haradhan Banerjee
Mr. Subhadip Biswas
Ms. Dona Saha

... for the opposite party no.1

As prayed for by Mr. Gupta, learned advocate for the petitioner, leave is granted to the learned advocate-on-record of the petitioner to implead the parties who have been inadvertently left out from being impleaded in this application under Article 227 of the Constitution of India.

Let such amendment be carried out, here and now.

This application under Article 227 of the Constitution of India is at the instance of the defendant no.1 in a suit for declaration, partition and for other consequential reliefs, challenging an order dated 20th January, 2025 by virtue of which the application under Order 39 Rule 7 of the Code of Civil Procedure filed by the plaintiff/opposite party no.1 herein, stood allowed.

Mr. Gupta, learned advocate appearing for the petitioner submits that the petitioner filed an

application for review of the order dated 20th January, 2025 which stood dismissed by the order dated 5th February, 2025.

It is not in dispute that there is an order of status quo in regard to the nature, character and possession of the properties mentioned in para V, VI and VII of Part 1 of A Schedule of the injunction application. Alleging that there has been a violation of such order of injunction, the plaintiff/opposite party no.1 herein took out an application under Order 39 Rule 7 of the Code of Civil Procedure praying for appointment of a commissioner to conduct local inspection on the points as stated in the schedule of such application.

The learned trial Judge after taking into consideration the fact that there is an allegation of violation and separate proceedings have also been initiated by the plaintiff/opposite party no.1 herein alleging such violation observed that local inspection is very much necessary for the purpose of proper adjudication of the matter in dispute.

Heard Mr. Gupta, learned advocate for the petitioner and Mr. Banerjee, learned advocate for the plaintiff/opposite party no.1 herein. After going through the impugned order this Court finds that local inspection on the points allowed by the learned trial Judge excepting the point relating to tile shed

structure are necessary for the purpose of deciding as to whether the order of status quo has been violated.

Mr. Gupta, learned advocate for the petitioner would submit that the learned trial Judge directed the commissioner to submit a report on the point as to whether the tile shed structure with brick work has been repaired or re-erected on the suit property though in the application for local inspection such point was not taken.

Mr. Banerjee, learned advocate for the opposite party, in his usual fairness, admits that such point was not taken in the application for local inspection.

In view thereof, this court is of the view that commissioner should hold the commission work in respect of all the points as indicated in the order impugned excepting the point mentioned hereinafter:

- Whether the tile shed structure with brick work has been repaired and or re-erected on the suit property.”

The order impugned stands modified only to the extent as indicated hereinabove.

Mr. Gupta, learned advocate for the petitioner, expresses his anxiety and submits that holding a local inspection will ultimately delay the hearing of the suit.

Such apprehension is without any basis as this court finds that learned trial Judge directed the advocate commissioner to submit a report on 28th February, 2025 and also that the commissioner's fees have already been paid, as submitted by Mr. Banerjee, and tomorrow is the date fixed for holding local inspection.

With the above observation, CO 601 of 2025 stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)