

M/L- 840
10/07/2025
Ct. No.-6
Aritra

C.O. 727 of 2024
With
CAN 1 of 2025
Mamoni Guchait
Vs.
Tarun Mondal & Ors.

Mr. Pinaki Ranjan Mitra
...for the petitioner

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K.R. Ahmed
Mr. Tapas Chatterjee
Mr. Rudranil Das
....for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order being No.22 dated February 22, 2024 passed by the learned Civil Judge (Jr. Div.), 1st Court at Howrah in Title Suit No.164 of 2022. By the order impugned, the application for local inspection was allowed.

The learned advocate appearing for the petitioner submits that the suit property has not been properly described in the plaint and for such reason the suit property cannot be identified properly. He submits that the opposite party herein filed an application for holding local inspection and in such application a schedule has been appended thereto. The learned advocate for the petitioner further submits that the property described in

the application for local inspection is different from that mentioned in the schedule of the plaint.

Mr. Mukherjee, learned advocate appearing for the opposite party submits that the portion of the suit property in respect of which the local inspection was sought for has been specifically mentioned in the schedule of such application. He submits that the defendant Nos.1 and 2 forcibly entered into the suit property and cut down all banana trees, mango trees and uprooted the seasonal vegetables and have illegally put a fencing in a portion of the suit property by affixing concrete readymade pillars and fixed tin shed thereat just on the western side of the plaintiffs' dwelling house for the purpose of creating obstruction to the smooth egress and egress of the petitioners to and from their dwelling house. Mr. Mukherjee further submits that pursuant to the impugned order local inspection has already been held and the Commissioner submitted his report and the petitioner had also filed an objection thereto. He thus submits that at this stage, this Court should not interfere with the order allowing the application for local inspection.

Heard the learned advocates for the respective parties and perused the materials placed.

Order 39 Rule 7 of the Code of Civil Procedure states that the Court may, on application of any party to the suit and on such terms as it thinks fit make an order

for the detention, preservation or inspection of any property which is the subject matter of the suit, or as to which any question may arise therein.

The opposite party herein filed a suit for declaration that the opposite parties are the owners of the schedule property and they are possessing the same without any interruption from anyone and for a decree of perpetual injunction restraining the defendants, his men, servants, agents and/or assigns from entering and/or trespassing in the suit property. The suit property has been specifically described in the schedule of the plaint and the same is extracted hereinafter:-

“SCHEDULE REFERRED TO ABOVE

All that piece and parcel of danga land measuring more or less 11.75 decimal comprised in L.R. Dag No.2313 Mouza Jujarsha P.S. Panchla, District-Howrah-711302.”

In paragraph 7 (a) of the plaint it has been specifically stated that the suit Dag is R.S. 2185 corresponding to L.R. Dag 2313 which is measuring about 60 decimals. It has been further stated therein that Nagendranath Mondal had 1/5th share in the said property measuring about 12 decimals of land within the suit dag. It is the specific case of the plaintiff that after the death of Nagendranath Mondal his share in the said property devolved upon his widow Charubala Mondal @ Charulata Mondal and three daughters and the petitioners claimed to have purchased the share of the

Nagendranath Mondal from the heirs of Nagendranath Mondal by virtue of a sale deed.

In the plaint, the plaintiffs have title claimed in respect of 11.75 decimals in L.R. Plot No.2313. Plaintiffs have claimed to be enjoying absolute possession of the suit property and are residing in the same L.R. Plot No.2313 which is adjacent to the suit property.

The defendant No.1 is claiming ownership in respect of 3.42 decimals of the suit property by virtue of a deed of conveyance.

It is the case made out by the plaintiffs that the defendant No.1 does not have any right, title and interest over any portion of the property but in connivance and conspiracy with her husband who is a joint owner of the suit plot is trying to dispossess the plaintiff from the suit property.

Thus it appears to this Court that there is a dispute with regard to title and possession of the parties in respect of a plot which is measuring about 60 decimals and the plaintiff is claiming that he is the owner of 11.75 decimals of the said plot. Though the plaintiff claims to be in exclusive possession of the suit property but the position and location of the suit property which is a portion of L.R. Plot No.2313 has not been described in the schedule of the plaint either by way of boundaries or by a sketch map.

The opposite party filed an application under Section 151 of the Code of Civil Procedure praying for implementation of the order of injunction dated November 7, 2022 through police help. It has been specifically stated in the said application that the defendant Nos.1 and 2/petitioners herein have erected readymade pillars over a portion of the suit property thereby changing the nature and character of the same in violation of the order of injunction.

The application under Order 39 Rule 7 of the Code of Civil Procedure appears to have been filed in aid of the application under Section 151 of the Code of Civil Procedure. In the application under Order 39 Rule 7 of the Code of Civil Procedure, the opposite parties herein have prayed for appointment of an advocate Commissioner for holding commission and the points for local inspection is to draw a rough sketch map of the portion of the suit property of the plaint as mentioned in the schedule appended to this application; to take note and report about the present nature and character of the portion of the said property; to note and report whether the above mentioned portion of the suit property is fenced or not, if fenced the nature and condition of the same; and to note any other local feature and features as may be pointed out at the time of inspection.

As observed hereinbefore, the suit property has not been specifically identified in the schedule of the plaint.

The plaintiff sought to overcome such defect by appending a schedule to the application for local inspection.

Order 39 Rule 7 of the Code of Civil Procedure permits inspection in respect of the property which is the subject matter of the suit. When the suit property has not been properly identified in the plaint, this Court is of the view that the attempt on the part of the opposite party was to fish out evidence by way of local inspection which is not permissible in law.

As observed hereinbefore, the dispute between the parties is with regard to title and possession which has to be proved by documentary and oral evidence and not by way of local inspection.

The learned trial judge allowed the application for local inspection by only observing that on perusal of the petition along with materials on record it seems that to bring out the present status of the suit property, a local inspection is necessary.

To the mind of this Court, the application for local inspection was allowed by a totally non-speaking order. The learned trial judge did not apply its mind as to what is the suit property and whether the same has been properly described in the plaint.

For all the reasons as aforesaid, this Court is inclined to interfere with the order impugned. The order dated February 7, 2024 is set aside.

CO 727 of 2024 stands allowed and accordingly the connected application being CAN 1 of 2025 is disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)