

10.06.2025
Item No.3.
Ct. No.446.
gd

CO/1062/2024
PARIMAL CHANDRA GHOSH
VS
KANJIKA ROY

Mr. N. Chatterjee,
Mr. Anjan Banerjee
..for the Petitioner.

None appears on behalf of the opposite party and an affidavit of service showing notice was served in terms of the direction of this court is also filed before this court which reveals that the item was delivered on 23rd May, 2025.

Let the affidavit of service as submitted before this court be kept on record.

This revisional application is directed against order no.41 dated 7th February, 2024 passed by the learned Civil Judge (Junior Division), 1st Court at Barasat in Title Suit No.580 of 2013, renumbered as Title Suit No.11317 of 2014, refusing the prayer for local inspection under Order XXXIX Rule 7 read with Section 151 of the Code of Civil Procedure.

The fact of this case as submitted before this court is that a title suit for declaration and injunction in respect of the scheduled property was filed by the plaintiff/petitioner along with an application under Order XXXIX Rules 1 and 2 of the

Code of Civil Procedure and vide order dated 01.10.2013 such prayer was allowed restraining the defendant/opposite party from disturbing the plaintiff's peaceful possession over the suit property till 11.11.2013. Subsequently the said order has become absolute.

It is also stated that the property originally belonged to Hazari Bala Naskar and after demise of her the present petitioner got the absolute right by virtue of deed of sale from the successor of said Hazari Bala Naskar.

It is also submitted that since after purchase the present petitioner mutated his name and by raising a boundary wall and making a room he is in possession.

The defendant/opposite party has filed a written statement denying the contention of the present plaintiff and disputed the schedule as mentioned in the plaint.

It is submitted by the learned advocate of the petitioner that since the defendant has tried to make out a different case by giving a different schedule as butted and bounded the property as mentioned by the plaintiff, it was necessary to have a local inspection by appointing an Advocate Commissioner.

Accordingly, an application under Order XXXIX Rule 7 of the Code of Civil Procedure was filed

and copy of the same was also served upon the opposite party who raised the objection only to the extent of dilatory tactics.

The matter was heard by the learned court and vide an order dated 7th February, 2024 directed the same on an erroneous interpretation of the statute. The attention drawn by this court in the order impugned whereby the learned trial court while passing the order mentioned local investigation “in place of local inspection” and thereby submitted that the learned court was in wrong notion while considering the application for local inspection.

On careful perusal of the order impugned and the facts and circumstances of this case and copy of the pleadings as annexed in the petition, this court finds that the plaintiff was granted an order of interim injunction and his suit was for declaration and injunction against the defendant. It is undisputed that the Commissioner may be appointed for limited purpose and the report itself cannot be treated as evidence unless accepted by court.

Therefore, the case made out by the petitioner regarding the necessity of the local inspection for the purpose of inspection of the subject matter of the suit in terms of the relevant provision under Order XXXIX Rule 7 of the Code of Civil Procedure cannot

be ignored. At the same time the points for local inspection appears to be vague.

Therefore, this court finds that though the petitioner has been able to satisfy this court regarding the necessity to file an application for local inspection, prima facie, this court is not satisfied regarding the points mentioned in the application for local inspection which prima facie appears to be vague in nature.

The learned court has not assigned any such reason for refusal of the prayer excepting the ground of a direction of the Hon'ble Court to dispose of the suit within a stipulated period which, according to this court, cannot be the sole ground for rejection of the application for local inspection filed by the plaintiff if otherwise found necessary.

Therefore, in view of the above facts and circumstances, the instant revisional application is allowed by setting aside the order impugned with a liberty to the petitioner to file an application under Order XXXIX Rule 7 of the Code of Civil Procedure afresh before the learned court after serving a copy of the same upon the opposite party. The learned court is directed to hear out the said application if any filed after giving an opportunity of hearing to both the parties within a period of one month from the date of filing of such application without granting any

unnecessary adjournment to either of the parties. The petitioner is directed to file such application within seven days from the date of receipt of server copy of this order.

Let a copy of this order be sent to the learned trial court.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(CHAITALI CHATTERJEE (DAS), J.)