

M/L 83
13.01.2025
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

Pritam Santra & Anr.
Versus
Tukun Santra & Anr.

Mr. Mahammad Mahmud
Mr. Asif Ikbal Baidya
... For the petitioners.

1. The present revisional application has been filed, inter alia challenging the order dated 1st March, 2024 passed by the learned Civil Judge (Junior Division), Additional Court, Hooghly in Title Suit No.113 of 2023, whereby the petitioners' application for local inspection under Order 39 Rule 7 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "Code") has been rejected.
2. The plaintiffs' case proceeds on the premise that Golak Santra was the recorded owner in respect of the suit property. The said Golak Santra died on 6th March, 2021, leaving behind and surviving the plaintiff no. 1 as the son and the plaintiff no.2 as his widow. The plaintiffs claim to have since mutated their names in the records of rights with the concerned BL& LRO and are currently running a business in the name and style of "Santra Furniture and Electronic" and the defendant no.1/opposite party no.1 is trying to grab the property and had

attempted to dispossess the plaintiffs from the suit property. Attempts are also being made to close the aforesaid business with local miscreants. Since, the defendant no.1 had been attempting to dispossess the plaintiffs, the plaintiffs had filed the instant suit and had also filed an injunction application. It is in connection with the aforesaid suit the aforesaid application under Order 39 Rule 7 of the Code has been filed. From the application filed under Order 39 Rule 7 of the Code read with Section 151 of the Code, it would appear that the plaintiffs have sought for appointment of an advocate commissioner with a direction upon him to carry out inspection work as referred to in the schedule A of such application concerning the schedule B property that is the suit property. To morefully understand the scope of the commission work, schedule A of such application is extracted hereinbelow:

Schedule A

- (A) To draw a raff sketch map of "B" schedule of this application.*
- (B) To note down the nature and condition of the "B" schedule property.*
- (C) To note down is there any construction is already done on the 'B' schedule property of this application.*

(D) To note down the how many room is made into the “B” schedule property of this application.

(E) To note down is there any FURNITURE AND ELECTRONIC business running over the ‘B’ schedule property of this application under the name and style “SANTRA FURNITURE AND ELECTRONIC”.

(F) To note down the local feature at the time of commission work mention by the Ld. Advocate of the plaintiff.

3. The learned Court by an order dated 1st March, 2024 by taking note that the suit is for declaration and permanent injunction and the application does not mention the reasons why the plaintiffs require the commission work and there being no allegation of encroachment or construction by the defendant no.1 over the suit property and there being no prayer for recovery of possession or for mandatory injunction, was of the view that there is no scope to allow any commission work to note down the construction of schedule ‘B’ property, since, according to the learned Judge, the same is beyond the pleadings filed by the plaintiff, Mr. Mahmud, learned advocate for the plaintiffs/petitioners would, however, submit that the aforesaid order is perverse and this Court may by setting aside the same allow the application filed under Order 39 Rule 7 of the Code.

4. Having heard the learned advocate for the petitioner and noting that the suit is only for declaration and injunction, the order impugned prima facie does not appear to be perverse. Admittedly, in this case, there is no pleading as regards any construction work being carried out within the suit property. The plaintiffs are only aggrieved by the attempt made by the defendant no.1 to dispossess the plaintiffs from the suit property.
5. Having regard thereto, I am of the view that the scope of the application under Order 39 Rule 7 of the Code is beyond the scope of the suit. From paragraph 21 of the written statement filed by the defendant no.1/opposite party no.1, it would transpire that the defendant no.1 claims to be the actual owner in respect of half share of the suit property and also claims to have recorded his name in the LR Records of Rights. According to the defendant no.1, Parbati Devi, mother of the defendant no.1, owned half share in the suit plot and during her lifetime had gifted the suit plot through a deed of gift registered in the office of ARA-3, Kolkata in his favour.
6. In view of the stand of the defendant No.1 and there being no scope to note down the construction of the suit property or the nature thereof, no interference

is called for. The revisional application fails and is accordingly dismissed.

7. Dismissal of the aforesaid application shall not stand in the way of the learned Court proceeding to decide on the application for temporary injunction. If the learned Court is of the view that there is any dispute as regards possession or identity of the suit property, it shall always be open to the parties to apply for local inspection for determining the same in accordance with law.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)