

D/L- 19
10/06/2025
Ct. No.-6
Aritra

C.O. 1895 of 2025

**M/s. Sheth Enterprises Pvt. Ltd. Co.
Vs.
Nabarun Sangha**

Mr. Tanmoy Mukherjee
Ms. Vijaya Bhatia
Mr. Ganesh Prasad Shaw
Mr. Gaurav Kumar
Mr. Harshit Thirani

...for the petitioner

Mr. Falguni Majhi
Ms. Shila Chatterjee

....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.15 dated May 6, 2025 passed by the learned Civil Judge (Jr. Div.), 2nd Court at Howrah in Title Suit No.1167 of 2024.

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

The petitioner filed a suit for declaration of title in respect of A schedule property and for a further declaration that the petitioner has a right of user of the B schedule common passage for free ingress and egress to the A schedule property through the B schedule common passage and for other consequential reliefs.

The opposite party herein is contesting the said suit by filing a written statement. In the written statement the opposite party has also set up a counter-claim

praying for a declaration that the opposite party/club is in lawful permissive possession of schedule X property and for permanent injunction restraining the petitioner and his men and agents from interfering and obstructing the opposite party from enjoying the suit property and from encroaching the schedule X property of the counter-claim.

On an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure being moved by the petitioner, the learned trial judge, by an order dated August 28, 2024, passed an ad interim order of injunction restraining the opposite party from making any disturbance or interference with the petitioner's peaceful possession and enjoyment over the A schedule property and from free ingress and egress of the petitioner to the A schedule property through B schedule common passage for a period of time as specified in the said order.

The opposite party filed an application under Order 39 Rule 4 of the Code of Civil Procedure and the learned trial judge by an order dated September 20, 2024 allowed such application thereby modifying the order dated August 28, 2024 temporarily only for the period of Puja festival days thereby allowing the opposite party to celebrate the Durga Puja festival in the suit property but with a specific condition without creating and causing any disturbance in the egress and ingress to the

plaintiff's in the A schedule property. The opposite party thereafter filed an application under Order 39 Rule 7 of the Code of Civil Procedure praying for appointment of an advocate commissioner for the purpose of holding local inspection on the points mentioned in the schedule of such application. The application for local inspection was allowed by the impugned order.

Being aggrieved the plaintiff has approached this Court.

Mr. Mukherjee, learned advocate appearing for the petitioner submits that B schedule property is a common passage and the opposite party has been restrained by an order of injunction from interfering with the right of user of the plaintiff over the B schedule property for the purpose of ingress to the A schedule property through the B schedule common passage. Mr. Mukherjee further submits that local inspection is not necessary for the purpose of deciding the real questions in dispute between the parties in the suit or in the injunction application.

The learned advocate appearing for the opposite party submits that the opposite parties are in permissive possession of the B schedule property and is using the same for the purpose of celebrating Durga Puja and also performing various other functions throughout the year. He further submits that for the purpose of bringing the real picture of the suit property before the Court local

inspection is absolutely necessary and the learned trial judge after considering the materials on record thought fit to allow such application.

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

The B schedule property as described in the plaint is a piece and parcel of a common a passage on the East side of the A schedule property measuring 19 ft. in width running from North to South situated at premises No.659, Sarat Chatterjee Road under Police Station- Chatterjeehat in the district of Howrah. The petitioner has claimed a right of user of the B schedule common passage for free ingress and egress to the A schedule property through the B schedule common passage.

In the counter-claim the opposite party has specifically stated that the B schedule property was actually owned and possessed by one Shri Anil Kumar Bhattacharya and other co-sharers and they afforded permission in writing to the defendant/club to celebrate Durga Puja and other functions at the said plot of land since last few years.

After going through the pleadings in the counter-claim, this Court finds that it is the case of the opposite party that they are using the property mentioned in schedule X to the counter-claim for the purpose of conducting Durga Puja and for performing various other functions.

In the application under Order 39 Rule 7 of the Code of Civil Procedure the opposite party has prayed for local inspection for drawing a sketch map of the suit property as well as the structures standing thereon and the goods, articles and belongings lying thereon; the sketch map of the eastern side field of the A schedule suit property including structures standing on the field/ground; and to note the very existence of purported common passage in between schedule A and the ground/field as mentioned in schedule B to the plaint.

After going through the points of local inspection more particularly point No.3 thereof, this Court finds that the opposite party has sought to make out a case that the common passage exist between schedule A and the ground/field. However, there is no pleading in support thereof in the counter-claim.

It is also the case of the opposite party that the B schedule property is being used by them for the purpose of holding Durga Puja and performing various other functions. The opposite party has not claimed that there exists any permanent structures thereon in the B schedule property.

Thus to the mind of this Court the application for local inspection was filed only for the purpose of collecting evidence which is impermissible in law.

Whether the plaintiff has a right of user over the B schedule common passage and whether the defendant

club has been given permission to hold Duga Puja on the B schedule property by the owners have to be proved by way of oral and documentary evidence and the same cannot be proved by holding local inspection.

For such reason, this Court is inclined to interfere with the order impugned. Accordingly, the order dated May 6, 2025 is set aside.

C.O. 1895 of 2025 stands allowed.

There will be no order as to costs.

After this order is dictated, the learned advocate appearing for the opposite party submits that the opposite party has already deposited the commissioner's fee pursuant to the impugned order. The opposite party will be at liberty to apply before the learned trial judge for refund of such amount and if such an application is filed the learned trial judge shall consider and dispose of the same in accordance with law as expeditiously as possible.

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

(Hiranmay Bhattacharyya, J.)