

C.O. 1694 of 2024

**Suman Saha @ Suman Prasad Saha & Ors.
versus
Swapam Kumar Baral**

Mr. Subir Banerjee
Mr. Biswajit Nag

...For the petitioners

1. Challenging the order no. 62 dated 22nd February 2024 passed by the Learned Civil Judge (Junior Division), 1st Court Malda in O.C. No. 04 of 2020 in accepting the Advocate Commissioner's report, the instant revisional application has been filed.

2. Mr. Banerjee, learned advocate appearing in support of the instant revisional application by drawing attention of this Court to the objection raised by the petitioner to the report of the Advocate Commissioner submits that the Commissioner had acted in a partisan manner. He submits that the Commissioner took aid and assistance of the opposite party in preparing such report. He submits that the Leaned Court had exceeded its authority and had erred in accepting the report of the Commissioner.

3. Having heard the learned advocate appearing for the petitioners, I find that the instant suit has been filed by the opposite party for declaration of tenancy and injunction from eviction. Such fact would corroborate from paragraph 2 of the instant revisional application. The petitioner's case proceeds on the premise that the suit property has become dilapidated by natural wear and tear and since it has been declared to be dangerous, the same needs to be demolished. It appears that the Learned Court at the instance of the opposite party had allowed the application for appointment of the Advocate Commissioner under the provisions of Order XXXIX Rule 7 of the Code of Civil Procedure 1908 read with Section 151 thereof on contest. By order dated 16th July 2022, the Learned Court was, inter alia, pleased to direct appointment of Advocate Commissioner to conduct local inspection on the point nos. 1,

3, 4, 7, and 8 of the petition for local inspection filed by the opposite party. The aforesaid points for inspection are extracted hereinbelow:-

“1. Whether the plaintiff has a shop in the building as described and what is the condition of the roof, wall, doors and windows of the said shop and further, whether there is any damage in the roof of the suit shop.

3. What construction works have taken place in the suit shop and whether the suit shop is safe and habitable?

4. What is the condition of the courtyard and floor of the suit shop?

7. The location of the suit building and the position of jewelry in the suit shop.

8. Sketch map of the suit property as described in the schedule to the plaint.”

4. It appears that the learned advocate-Commissioner had since upon completion of the commission work filed his report. A written objection was filed objecting to such report on behalf of the petitioner. It would transpire that the primary objection raised by the petitioner is with regard to the local inspection not being carried out by following due course of law and that the report is without any basis. The above objection is general in nature. There is no other specific ground indicated in the aforesaid objection, far to speak of any ground as regards the learned advocate-Commissioner acting in a partisan manner. It appears that he Commissioner was duly examined and cross-examined. The learned Court upon perusing the document, petition and the commissioner's report and after considering the examination, was of the opinion that the commissioner's report dated 9th November 2022, field diary and the sketch map should be accepted. However, since there

was no mention of photographs, in the order dated 16th July 2022, the Learned Judge had refused to accept the same.

5. From a perusal of the aforesaid order it would transpire that the Learned Judge, on the basis of application of mind had accepted the Commissioner's report. I do not find any irregularity in the order of the Learned Judge. The submission made on behalf of the petitioner in Court today as regards the Commissioner acting in a partisan manner, does not find place in the objection filed by the petitioner.

6. Having regard thereto, the revisional application being C.O. 1694 of 2024 is dismissed without any order as to costs.

7. All parties shall act on the basis of the server copy of the order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)