

Sl 43
30.06.2025
Court No.6
BP

C.O. 2224 of 2025

Sushil Smriti Sangha & Ors.
-versus-
Ananta Roy & Ors.

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das
Mr. Soumava Santra
... for the petitioners

Mr. Partha Pratim Mukhopadhyay
..for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against an order being no.4 dated 2nd April, 2025 passed by the learned Civil Judge (Junior Division), 3rd Court at Howrah in Title Suit No. 1648 of 2023.

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

Mr. Mukherjee, learned advocate appearing for the petitioners submits that the learned advocate who has lodged a caveat has been duly served.

Mr. Mukhopadhyay, learned advocate appears for the caveator.

Heard the learned advocate for the caveator.

The opposite parties filed a suit for declaration of title and for permanent injunction in respect of a bastu land measuring 9 cottahs 6 chittacks together with

structures standing thereon with 10 feet wide common passage situated at premises no. 91, Madhusudan Biswas Lane.

The petitioners herein are contesting the said suit by filing a written statement. In the said written statement the petitioners have set up a counter claim praying for a declaration that the defendant no.1 club is in actual visible, open undisturbed, exclusive, hostile possession which continued over the statutory period as adverse possession in exclusion to the actual owner in respect of the entire portion of the suit property and for a further declaration that that the instruments, mutation on the basis of which the plaintiffs are claiming exclusive ownership in respect of the suit property is illegal and void ab initio.

In such a suit the petitioners filed an application under Order 39 Rule 7 of the Code of Civil Procedure for appointment of a commissioner for the purpose of noting the existing condition, nature, character, object as well as the existing structure which is situated at and over the suit property.

After reading the plaint as a whole this Court finds that the opposite party has prayed for declaration of title and permanent injunction and the petitioners herein are claiming adverse possession in respect of the self same property.

Such a dispute has to be decided on the basis of

documentary and oral evidence. This Court is of the considered view that holding local inspection cannot serve the purpose of adjudication of the dispute involved in the suit. The trial judge was right in holding that the actual topography of the suit property cannot play a role in adjudicating the injunction application and the issue of possession also has to be proved by evidence and not by way of report of the Commission. The learned trial judge assigned cogent reasons for rejecting the application under Order 39 Rule 7 of the Code of Civil Procedure.

For such reason, this Court is not inclined to interfere with the order impugned.

Accordingly, C.O. 2224 of 2025 stands dismissed.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)