

Item No. 37
19.11.2025
Court. No. 6
GB

C.O. 3953 of 2025

Alok Saha
Vs.
Sukumar Saha

Mr. Buddhadev Ghoshal,
Mr. Souri Ghosal

...for the Petitioner.

Mr. Debjit Mukherjee,
Ms. Priyanka Jana,
Ms. Susmita Saha

...for the Opposite Party.

1. This is an application challenging an order dated September 3, 2025, passed in Title Suit No.16211 of 2014 by the learned Civil Judge (Junior Division), 2nd Court at Howrah.
2. By the order impugned, the learned court rejected an application under Order 39 Rule 7 of the Code of Civil Procedure filed by the petitioner who is the defendant in the suit. The suit is for recovery of khas possession of a shop room measuring around 72 Sq. ft. at premises no.1/3/1, Chandrakumar Banerjee Lane, Police Station – Shibpur, District – Howrah.
3. It is alleged that on August 2, 2012, in the absence of the plaintiff, the defendant No. 2 had forcibly, illegally and unlawfully dispossessed the plaintiff from the said suit property and hence, the plaintiff filed the suit for recovery of khas possession and for a direction upon the defendant no.2 to redeliver the possession of the plaintiff in relation to the suit property. It appears that the defendant no.2 expired and his name was

expunged from the records and the suit is now continuing against the petitioner. Local inspection was sought for on the following points:-

“POINTS FOR LOCAL INSPECTION

- 1. To draw a rough sketch map of the suit property described in the schedule below.*
 - 2. To note and report the nature, condition, and physical status of the structures at the suit property.*
 - 3. To note and report whether any portion of the suit property appears to have been demolished or not.*
 - 4. To note the local features that would be pointed out by the parties at the time of commission work.”*
4. The learned court rejected the said application on the ground that at the fag end of the suit, the defendant was trying to collect evidence. Even if, the plaintiff had amended the plaint by dealing with the issue of demolition and forcible dispossession by the defendant no.2, the said issue was to be proved by the plaintiff in evidence and the defendant was to rebut such proof by leading evidence himself. Local inspection on the above-mentioned points were not necessary as the same would amount to fishing out evidence.
 5. I agree with the learned court. The plaintiff, in a suit for recovery of possession has to prove that the plaintiff was in possession of the shop room and

thereafter dispossessed by the defendant. The local features, rough sketch map, the nature and condition of the structure, whether the suit property had been demolished or not, are not relevant for adjudication of the defence case, especially because the court cannot allow inspection for the purpose of a roving enquiry.

6. The decision of ***Satyanarayan Dass and another versus Prabhunath Keshri (Shaw) and another*** reported in **2009 (3) ICC 186** and the decision of ***The Institution of Engineers (India) and another versus Bishnu Pada Bag and another*** reported in **1978 Cal HCN 32**, do not apply in the facts of the case, in fact. In ***Satyanarayan Dass (supra)***, the High Court was of the specific view that the plaintiff's prayer for local inspection should be allowed as the plaintiff had asserted that the defendants had locked the suit property with their own locks and the court had exercised discretion to ensure detention and preservation of the suit property. In the decision of ***The Institution of Engineers (India) (supra)***, The High Court was of the view that a commission could not be issued for fishing out evidence, to be adduced by either party in the suit.
7. In conclusion, I hold that each party has to prove his own case and helping a party to fish out evidence is opposed to justice. The plaintiff has to prove the case of dispossession and only after the burden is

discharged by the plaintiff and the defendant has to fulfill its reverse burden.

8. Under such circumstances, the application is dismissed. All questions are left open to be decided by the learned trial judge.
9. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)