

CO. 1483 of 2025

18.06.26
D/L
Sl-06
Ct. 06
(Samar)

Ashok Kumar Singha & Anr.
Vs.
Rajkumar Garain & Ors.

Mr. Chittapriya Ghosh,
Ms. Priyanka Saha,
... for the petitioners.

Mr. Souvik Sarkar,
.... for the opposite party no. 1.

Mr. Indranil Chanda,
..... for the opposite party no. 2.

1. This revisional application assails an order dated January 14, 2025 passed by the learned Civil Judge (Junior Division), Sadar Court at Suri, Birbhum whereby the opposite party nos. 1 and 2's application under Order 39 Rule 7 of the Code of Civil Procedure, 1908 for local inspection of the suit premises has been allowed.
2. Title suit No. 144 of 2022 has been instituted by the petitioners' seeking declaration of Title and Permanent Injunction. In the said suit, the opposite party nos. 1 and 2 filed an application for local inspection on the following points:
 - i) *Whether the defendant no. 1 runs a sweet meat shop in the suit property.*
 - ii) *What is the condition inside the shop room?*
 - iii) *Whether the roof of the shop room is bad in condition, if yes explain vividly the condition of*

the shop room.

- iv) What is the condition inner roof of the shop room and also inside wall of the shop room?*
- v) Whether there is provision of water supply in the shop room?*
- vi) Other local features if any.*

3. The said application was disposed by the learned Trial Court by modifying point nos. 1 and 2. As regards point no. 1, instead of the Commissioner conducting inspection to find out as to whether the defendant no. 1 was running the sweet meat shop at the suit property or not, the learned Trial Court modified it to the extent that the Commissioner would only see whether there was sweet meat shop at the suit property or not and as regards point no. 2, the Commissioner was directed to take photographs at the suit property.
4. Inspection as regards the other points was allowed by the learned Trial Court.
5. Feeling aggrieved thereby, the petitioner has approached this Court by way of present revisional application.
6. Mr. Ghosh, learned advocate appearing for the petitioner submits that the learned Trial Court has fallen in error in directing inspection to be done for the purpose of fishing out of evidence in order to assist the opposite party nos. 1 and 2 to prove their

possession in respect of the suit property. It is further submitted that inspection as regards point no. 5 is clearly indicative of the same.

7. Learned advocate appearing for the opposite party submits that the order impugned has been justly passed. It is submitted that the order would not cause any prejudice to the petitioner and as such the same should not be interfered with. It is submitted by both the parties that inspection in respect of the point nos. 1, 2 (as modified by the learned Trial Court) and point nos. 3 and 4 as well has already been conducted and report has been filed.
8. Heard learned advocates appearing for the respective parties and considered material on record.
9. It is well settled that inspection under Order 39 Rule 7 of the Code cannot be conducted for the purpose of fishing out of evidence. In such view of the matter, the modification of point no. 1 done by the learned Trial Court is quite justified. Insofar as the direction of the learned Trial Court to take photographs as regards point no. 2 is concerned, the same is aimed at ascertaining the condition of the property and not for the purpose of finding out as to who is in possession thereof. The report of the learned Commissioner would be read in that light.

As regards inspection in respect of point 5 is concerned which was stayed by a Co-ordinate Bench of this Court while admitting this application, the same could not have been directed by the learned Trial Court as the same could be used as an evidence of possession.

10. The direction as regards inspection in respect of point no. 5 of the application under Order 39 Rule 7 is therefore set aside. It is clarified that the Commissioner's report shall not be used for the purpose of ascertaining possession of the opposite party nos. 1 and 2 and said opposite parties shall have to prove their possession on the basis of independent evidence and not on the basis of the commissioner's report. The order impugned dated January 14, 2025 stands modified to the above extent.

11. With the above observations, CO. 1483 of 2025 stands disposed of. There shall be no order as to costs.

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

(Om Narayan Rai, J.)