

01.12.2022
Item No.1
Ct. No.7
CHC
(disposed of)

C.O.2548 of 2022

Smt. Shyamali Das & ors.
Vs.
Sri Sankar Karmakar @ Sankar & anr.

Mr. Srijit Chakraborty,
Mr. Amit Singh
...for the petitioners

Mr. Tanmoy Chowdhury,
Ms. Ritoprita Sghosh
...for the opposite parties

Subject-matter of challenge in this case is against the rejection of prayer for local inspection, by order dated 2nd July, 2022, passed in Title Suit No.09 of 2015, learned Civil Judge (Junior Division), 4th Court, Serampore, Hooghly.

Admittedly, this is a suit for eviction based on reasonable requirement.

Further admitted position is that there has been a previous local inspection held with respect to the suit property, but it was partially allowed. Challenging the decision of the trial court, passed under Section 39 Rule 7 C.P.C. this Court was approached in C.O. No.3563 of 2019. Coordinate Bench of this Court disposed of the C.O. No.3563 of 2019 permitting non suited property to be inspected, subject to the fulfillment of some conditions, specifically mentioned in the order itself.

It would be relevant here to quote observation passed by co-ordinate Bench of this Court, while causing disposal of C.O.3563 of 2019, which may be set out hereinbelow:-

“However, in the present case, the refusal by the court below in regard to the other premises than the suit premises was justified not on the score that the same was not a part of the suit premises, but on the ground that the plaintiffs are yet to prove their contention, which is disputed by the defendants-opposite parties, that the suit premises are occupied and/or belong to the defendants. Such an inspection could only be directed once it is proved in the trial of the suit that the said other premises belong to the defendants and/or are occupied by the defendants.”

Mr. Chakraborty, learned advocate appearing for the petitioners submits that after the disposal of C.O.3563 of 2019, there has been an amendment proposed by the petitioners/plaintiffs with regard to the schedule of the plaint, and the order allowing amendment goes unchanged upto now.

Mr. Chakraborty further contends that though plaintiffs have been given the right to pray for local inspection even during trial, but the dimension of litigation has been changed, after the introduction of

the 'D' schedule property allegedly occupied by defendants/opposite parties in the plaint itself.

It is thus submitted by Mr. Chakraborty that local inspection is necessary absolutely to establish the dire necessity of the plaintiffs with regard to the proposed eviction and the sufficiency of accommodation otherwise available by the opposite parties/defendants in 'D' schedule property.

Per contra, Ms. Ritoprita Ghosh, learned advocate appearing for the opposite parties controverting the submission, raised by Mr. Chakraborty, replies that the entire purpose of this exercise is to fish out evidence, without adducing evidence in proof of the grounds available under Section 6 of the West Bengal Premises Tenancy Act. More so, trial of the pending suit has not yet been commenced, and when such point has already been gone into by coordinate Bench of this Court in C.O.3563 of 2019, it does not require any revisit at the moment, even after the amendment, that had taken place thereby incorporating 'D' schedule property in the schedule of plaint.

It is thus strongly denied by the opposite parties that there is any necessity for holding local inspection at this moment, and the need of the local inspection, if there be any, may be considered subject to production of the evidence during trial of the petitioners/plaintiffs.

Having considered the submission of both sides, it appears that a property allegedly under possession of defendants, mentioned as 'D' schedule property, has been proposed to be inspected, under Order 39 Rule 7 C.P.C.

Mr. Chakraborty has frankly disclosed that the deed pertaining to 'D' schedule property has already been produced before the court below.

The undenying position is that till date trial has not yet been commenced.

It is for the plaintiffs/petitioners to establish the grounds already taken in the pleadings as available under Section 6 of the W.B.P.T. Act upon adducing evidence, both oral and documentary. When deed of defendants is available, and when the trial has not yet been commenced, there is sufficient scope left for plaintiffs to adduce evidence, both oral and documentary during trial. When the need of local inspection afresh with regard to the 'D' schedule property has already been considered by the court below, this Court is of the view that no fresh look is required to be put in at this moment. It is therefore, left to the discretion of the trial court, subject to the production of the evidence by the plaintiffs during trial, particularly, with reference to 'D' schedule property.

It is however, clarified that in the event of denial of possession and ownership of defendants/opposite

parties with regard to 'D' schedule property during the trial, nothing would prevent the petitioners to propose for local inspection in support of the prayer for reasonable requirement.

Trial be expedited, however, without granting any unnecessary adjournment, unless it is extremely unavoidable.

With this direction/observation, the revisional application stands disposed of.

Parties are directed to make communication of this order to the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)