

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

C.O. 2548 of 2022

Smt. Shyamali Das & Ors.

Vs.

Sri Sankar Karmakar & Anr.

**Mr. Srijib Chakraborty
Mr. Amit Singh**

... For the Petitioners.

Learned Advocate for the petitioner is present.

None appears for the opposite parties/caveators inspite of service of notice, although this matter is taken up by this Bench on two consecutive dates.

This application is directed against an order dated 2nd July, 2022 passed by the learned Civil Judge(Junior Division), 4th Court, Hooghly in connection with Title Suit No. 9 of 2015. Learned Judge by the said order has dismissed the application under Order 39, Rule 7 of the C.P.C by the plaintiff/petitioner.

The plaintiff/petitioner being aggrieved by the said order has come up with the instant application.

S.D. Learned advocate for the petitioner submits that the earlier similar application was moved before the learned court below but at that point of time the suit property of which the commission was sought for was not a suit property. The prayer for appointment of commissioner was rejected.

Learned advocate further submits that pursuant

to the said order an application for amendment was made, the same was allowed and the property of which the commission is sought for is being the suit property schedule (D) of the suit property.

Learned Judge in the order dated 2nd July, 2022 has relied upon the decision of the this Court reported in 2007(3) ICC, CAL 604 and 2011(4) ICC, CAL 157 as well as an unreported decision of this Court in C.O. 3561 of 2019. Although, there are decisions of this Court as to whether commission can be held with regard to the property which is not a suit property but the property of which the commission was sought for is a suit property at present. Thus application filed by the petitioner should be admitted and heard.

Thus this application is admitted.

Considering the nature of the case and the reliefs sought for by the plaintiff/petitioner, this court is of the view that there should be stay of further proceedings of the suit.

Hence further proceedings of the suit is stayed till two weeks after puja vacation and the matter shall appear one week after puja vacation under the heading 'Contested Application.'

(Biswaroop Chowdhury, J.)

