

(2012) 07 CAL CK 0039

Calcutta High Court

Case No: C.O. No. 2893 of 2010

Sandhya Rani Banerjee and
Another

APPELLANT

Vs

Subrata Mitra and Others

RESPONDENT

Date of Decision: July 2, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 7

Citation: (2013) 1 WBLR 615

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Mahendra Prasad Gupta, for the Appellant; Debjit Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

Prasenjit Mandal, J.

Heard the learned Advocates of both the sides. This application is at the instance of the defendants and is directed against the Order No. 47 dated May 13, 2010 passed by the learned Civil Judge (Junior Division), 2nd Court, Howrah in Title Suit No. 197 of 2006 thereby allowing an application for local inspection.

2. The plaintiff instituted a suit being Title Suit No. 197 of 2006 for eviction of trespassers, recovery of khas possession and permanent injunction against the defendants. In that suit, he filed an application for local inspection under Order 39 Rule 7 of the CPC and that application was allowed by the learned Trial Judge by the impugned order observing that the proposed inspection, if allowed, will not prejudice the defendants and as such, the application was allowed. Being aggrieved, this application has been preferred.

3. Having considered the submissions of the learned Advocates of both the sides and on consideration of the materials-on-record, I am of the view that the impugned

order cannot be sustained.

4. In order to decide the nature of the suit, I may point out that the suit property has been described at page 18 of the application which is quoted below:--

SCHEDULE

(DESCRIPTION OF THE SUIT PROPERTY)

ALL THAT piece or parcel of lands measuring more or less 2 cottahs 4 chittaks of vacant land along with structure at P.S. Shibpur within the Howrah Municipal Corporation premises No. 13/3, Kankra Para Lane, P.S. Shibpur, butted and bounded by:

On the North : Land of Brihaspati Chatterjee

On the South : 12" passage and thereafter open land of Kokil Roy

On the East : structures occupied by the defendants.

On the West : Land of Bholanath Bose.

5. So, from the description of the suit property, it is clear that the suit property has been described by plot No. and its boundaries and from such particulars the suit property could be identified easily.

6. Mr. Mahendra Prasad Gupta, learned Advocate for the petitioners, submits that previously a suit was held between the parties and in that suit, the matters were considered.

7. Anyway, I find that the inspection has been sought for on the following three points appearing at page No. 23:

(i) To note and draw a rough sketch map of the suit property.

(ii) To note the nature, manner of user and present condition of the suit property,

(iii) To note other feature and features as pointed out by the parties and/or their representatives.

8. If these three points are taken into consideration vis a vis the suit property, I am of the view that the Point No. (i) is a most formal point. The Point No. (iii) is on the matter which is available as local features and the Point No. (ii) is to note the nature, manner of user and the present condition of the suit property.

9. It may be noted herein that the petitioners has sought for relief of recovery of possession over the suit property which has been described with the specific boundary of the same.

10. Mr. Debjit Mukherjee, learned Advocate for the opposite parties, has contended that the defendants have violated the order of the Court and he has made

unauthorized construction and as such, inspection is necessary.

11. With due respect to Mr. Mukherjee, I am of the view that keeping in mind the main relief sought for in the plaint, the schedule of the property and the inspection as sought for, I am of the view that the proposed inspection is not at all necessary for proper adjudication of the matter in dispute. Accordingly, the learned Trial Judge should have dismissed the application. Consequently, I am of the view that the learned Trial Judge has committed material irregularity and illegality in the matter of passing the impugned order which cannot be upheld.

12. Mr. Mukherjee has also contended that if any injunction is prayed for and if there is a violation, so, it will be helpful if a report comes from inspection.

13. With due respect to Mr. Mukherjee, I am of the view that such submission cannot be accepted because it is not clear, if any application for violation of the injunction has been filed and that that is not the main consideration in the suit. So, the impugned order should be set aside.

14. Lastly, Mr. Mukherjee submits that a direction should be issued for early disposal of the suit since the suit is pending at the stage of framing of the issues.

15. Uptil now, I do not find any illegality or irregularity. So, at present I am of the view that no direction is necessary. However, either of the parties is at liberty to take appropriate steps if the situation demands.

16. Accordingly, I am of the view that this application should be allowed.

17. The revisional application is, therefore, allowed. The impugned order is hereby set aside. The application for local inspection stands rejected. The learned Trial Judge shall proceed with the suit from that stage.

18. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy, if applied for, be given to the learned Counsel for the petitioner upon compliance of necessary formalities.