

(2019) 06 CAL CK 0008

In the Calcutta High Court

Case No : Civil Order/Misc.Cas (CO) No. 738 Of 2019

Byomkesh Chakraborty & Ors Vs Sk. Sajahan?? ??

Date of Decision : 13-06-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 151
Code Of Civil Procedure, 1908 — Order 39 Rule 3, Order 39 Rule 7
Constitution Of India, 1950 — Article 227

Citation : (2019) 06 CAL CK 0008

Hon'ble Judges : Subhasis Dasgupta, J

Bench : Single Bench

Advocate : Krishnandas Poddar, Sujit Bhunia, Ashraf Ali, Sabnam Laskar

Final Decision : Disposed Off

Judgement

Subhasis Dasgupta, J

The impugned order No.4 dated 14.01.2019 passed by the learned Civil Judge (Junior Division), 1st Court at Paschim Medinipur in Title Suit No. 742 of 2018 allowing local inspection under Order 39 Rule 7 is the subject of challenge in this revisional application under Article 227 of the Constitution of India.

Learned advocate for the petitioners submitted that defendants/petitioners were the true/real owner of the suit property, against which the petitioners/plaintiff sought for declaration of his tenancy right and the prayer for local inspection was allowed by the court below behind the back of the petitioners/defendants committing gross illegality in violation of the principle of natural justice.

Learned advocate for the plaintiff/opposite party controverting submission raised by the petitioners submitted that in connection with suit for declaration of tenancy right, ad interim order of injunction was passed on 26.11.18 restraining defendants from disturbing the peaceful possession of the plaintiff/op in respect of the suit premises till the next date of hearing i.e. 2nd February, 2019, and further that in order to facilitate the prayer for repairing of the suit premises, local inspection of suit property was felt necessary with the appointment of

learned Local Inspection Commissioner. Thus according to learned advocate for the plaintiff/op, since the suit premises needed urgent repairing for its dilapidated condition, local inspection was considered to be obligatory, and the court upon due consideration of such facts and circumstances, allowed prayer for local inspection. It was thus proposed that there left nothing to be interfered with the order allowing local inspection of the suit premises under Order 39 Rule 7 C.P.C.

Admittedly, a suit was instituted on 20th February, 2018 praying for declaration of tenancy right of plaintiff in respect of the suit premises. On 26th February, 2018 ad interim order of injunction was passed ex parte, restraining defendants from disturbing peaceful possession of the plaintiff over the suit premises till the next date of hearing. The suit was made returnable on the next date of hearing i.e. on 2nd February, 2019. The compliance of the injunction under Order 39 Rule 3 C.P.C was made by plaintiff on 28th February, 2018.

The prayer for local inspection was made on 14th January, 2019 by filing a put up petition. It was thus made on a date, which was neither the next returnable date, nor done with due notice upon the adversary. The local inspection was held ex parte, and the report of the local inspection was submitted on 31st January, 2019. The learned court considered the learned Local Inspection Commissioner's report, held ex parte, while allowing the prayer for repairing as well as the police help, both under Section 151 C.P.C. Ridiculous enough to note that both for prayer for local inspection, and the prayer for repairing of the suit premises coupled with police help were filed on the strength of a put up petition being filed, but not on the scheduled date. There is nothing to show that the prayer for local inspection, in the absence of opposite parties having entered their respective appearance in the court below, was directed to be served in the address of the petitioners/op, where they ordinarily held their residence. Though learned advocate for the opposite parties submitted with much emphasis that since there was urgency in the matter to secure repairing of the tenanted premises for its dilapidated condition, the prayer for local inspection was considered to be obligatory, and the court below duly considered the same, while allowing the prayer for local inspection, but the crucial fact is that the moment when local inspection was allowed, the suit was appearing at the service stage, returnable date which was fixed on 2nd February, 2019. In the absence of any specific, definite finding of the court below revealing a complete and effective service upon the defendants, it would not stand to reasons that despite due service, the defendants deliberately stopped ensuring their appearance in the court below. It was thus felt obligatory on the part of the court below to ascertain the extent of the service, already ordered to be made effective, as regards the defendants so as to secure their appearance. There is nothing to show that the learned Commissioner held inspection even after giving due notice upon the defendants. As such the order of inspection was held purposefully behind the back of the defendants, who are true/real owners of the suit property, the reasons of which may be best known to the plaintiff/op, while procuring such

local inspection.

The principle of natural justice demands that whenever any application is filed by either of the parties to this case on a date, not originally fixed, the same should be duly served upon the adversary with a view to getting the adversary posted with the due knowledge that such action is going to be made in the court below on the date to be fixed by the court below against him.

Here in this case, there has been gross violation of principle of natural justice, which demands in the given set of facts, an opportunity of hearing to be given to the other side, while making consideration for local inspection of the suit property.

From the copy of the lower court order, enclosed with the case record, it appears that the prayer for local inspection was made, subsequent to the grant of ad interim order of injunction. Thus, it is clear that the learned court below had no problem to allow prayer for ad interim order of injunction even in the absence of local inspection. It was basically made as a step towards obtaining a further order for repairing the suit premises.

Upon consideration of the rival submissions, raised by the respective parties to this case, the court is of the view that the order allowing local inspection was made violating the principles of natural justice, and as such the same is not sustainable.

The revisional application succeeds.

The impugned order dated 14th January, 2019 allowing local inspection in connection with Title Suit No. 742 of 2018 passed by the learned Civil Judge (Junior Division), 1st Court at Paschim Medinipur cannot go unaltered, and as such the same is set aside.

The opposite party/plaintiff is, however given liberty to pray for local inspection afresh before the court below, and if any such prayer for local inspection is submitted within one month from the date of communication of this order, the same shall be disposed of by the court below giving sufficient opportunities of hearing to either of the parties to this case and after adhering to the principles of natural justice, and other principles operating in this filed.

With the observation, and direction, the revisional application stands disposed of.

Urgent certified copy of this order and judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.