

(2010) 11 CAL CK 0051
In the Calcutta High Court
Case No : C.O. No. 1966 of 2007

Kowser Ali Sk. (deceased) and Others	APPELLANT
Vs	
Rabiul Haque Daptari and Others	RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Citation : (2010) 11 CAL CK 0051

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Hiranmoy Bhattacharjee, for the Appellant;None, for the Respondent

Judgement

Prasenjit Mandal, J.—This application is at the instance of the plaintiff and is directed against the order No. 74 dated April 26, 2007 passed by the learned Civil Judge (Junior Division), First Court, Baruipur, District - South 24 Parganas in Title Suit No. 162 of 2003 thereby allowing an application for local inspection filed by the defendant Nos. 1 & 2 / opposite parties herein.

2. The short fact is that the petitioner instituted a title suit being T. S. 162 of 2003 praying for declaration of title and permanent injunction against the opposite parties herein. In that suit, the defendant Nos. 1 & 2 / opposite parties herein entered appearance and they are contesting the same by filing a written statement denying all the materials allegations raised in the body of the plaint. Thereafter, the defendant Nos. 1 & 2 filed an application praying for permission to repair the suit property. The opposite parties have given the schedule of the work to be performed by the learned commissioner as appearing at page No. 14 of the application. It is the specific case of the opposite parties that the defendant Nos. 1 & 2 have been residing on the suit property, as described in the schedule of the plaint, by raising Darma structures, etc. thereon and these require for urgent repair as the frame of the said shed has been damaged. The rooms are likely to fall at any time. In order to ascertain the damage, the application for local inspection was filed and that application was allowed by the impugned order. Being aggrieved, the plaintiff/petitioner has filed this application.

3. Upon hearing Mr. Bhattacharya, learned Advocate appearing on behalf of the petitioner, I find that the opposite party Nos. 1 & 2 have clearly stated that they have been possessing the suit property and that they have there residential rooms thereon which have been made by bamboo splits with asbestos and tiles shed and those require urgent repairing. In order to ascertain such fact, by the impugned order, the learned Trial judge has appointed one learned commissioner. Since the schedule of work appearing at page No. 14 lays down for seeking opinion of the learned commissioner to be appointed, the learned Trial Judge reframed the points for inspection and thus allowed the application for local inspection on contest deleting the opinion portion. Since the opposite party Nos. 1 & 2 have specifically stated that the rooms are in dilapidated condition and they are likely to fall at any time, I am of the view that the discretionary power exercised by the learned Trial Judge should not be set aside. Rather he has taken such steps which demand the situation. Therefore, I am of the view that there is no ground for interference with the impugned order.

4. Accordingly, I am of the view that this application is devoid of merits. It is, therefore, rejected.

5. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.