

(2018) 01 CAL CK 0137
In the Calcutta High Court
Case No : 34 of 2018

Nemai Chandra Ghosh @ Nemai Ghosh	APPELLANT
Vs	
Smt. Basumati Ghosh & Ors	RESPONDENT

Date of Decision : 17-01-2018

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 39 Rule 7](#)

Citation : (2018) 01 CAL CK 0137

Hon'ble Judges : Harish Tandon

Bench : Single Bench

Advocate : Anjan Ray, Victor Dutta, A. Halder

Final Decision : Disposed oFF

Judgement

1. This revisional application is directed against an order dated 2nd November 2017 passed by learned Civil Judge (Jr. Div), 7th Court, Howrah in Title Suit No. 219 of 2010 by which an application under Order 39 Rule 7 of the Code of Civil Procedure is allowed.
2. At the very outset, this Court must record that there is no reason recorded in the said order necessitating the appointment of advocate commissioner for inspection. Mere quoting that it will bring real picture to the Court does not absolve the learned Judge from recording the reason whether the inspection by the advocate commissioner is necessary.
3. Order 39 Rule 7 of the Code of Civil Procedure empowers the Court to make an order for inspection of any property which is the subject property of such suit, or as to which any question may arise.
4. The language used in the said provision is explicit and clear that the Court cannot appoint the commissioner suo motu but on an application of any of the party to the suit. Merely because the inspection may elucidate the present condition of the schedule suit property does not absolve the learned Judge from

narrating the nature of the disputes involved in the suit and the necessity of an inspection on such questions or the disputes.

5. The order appears to have been passed in cryptic manner and it would not be wrong to say that it does not contain reasons. It is mandatory on the Court to record reasons before deciding the rights of the parties. The order without reason is no order in the eye of law.

6. Solely on the above premise this Court set aside the impugned order and directs the learned Judge in the Court below to decide the application under Order 39 Rule 7 of the Code afresh by recording proper reasons.

7. None of the observations may hereinabove shall have persuasive value to the learned Judge in deciding the said application on merit. With these observations, the revisional application is disposed of. There shall be no order as to costs.