

CIVIL REVISION
BEFORE THE HON'BLE JUSTICE MD ABDUL GHANI

Judgment on 26.4.2010

C.O. 2407 OF 2009

Smt Anjana Sarkar

versus

Paresh Chandra Majumder & Ors

Point:

Local inspection- Local inspection for non-suit property whether permissible.- Code of Civil Procedure, 1908- Order 39 Rule 7

Facts:

Application under Order 39 Rules 1 and 2 of Code of Civil Procedure filed by the Petitioner/tenant in connection with the suit seeking temporary injunction restraining the Opposite Party from dispossessing the petitioner from the suit premises. The opposite party / landlord contested the application by filing written objection. O.P. demolished the roof of the first floor which causing damages to suit property . Application under order 39 Rule 7 was rejected by the trial court by the order impugned.

Held:

The local inspection as prayed for if allowed shall not cause any prejudice to the O.P. Although, the inspection has been prayed in respect of the non-suit portion of the suit property but the same happens to be the part and parcel of the suit premises as a whole inasmuch as the petitioner resides in the ground floor, while the O.P. resides in the first floor of the premises. The Court thinks it would be expedient and proper to allow the application under Article 227 of the Constitution of India for arriving at a just decision.

Para-9 and 10

Cases- Cited:

AIR 1961 SC 218---- Padam sen & Ans V The State of Uttar Pradesh & Ors

AIR 1978 Cal 296-----The Institution of Engineers (India) & Ans V Bishnu Pada bag & Ors

AIR 1997 Cal 80----Allahabad Bank V Sourindra Nath Shaw & Ans

AIR 1996 Bombay 96---Madhukar R Jaule V Bhaskar Ramnath Shibad..

Mr Gopal Chandra Ghosh

For petitioner

Mr Ujjal dutta

Mr Subhasish Biswas

For the opposite party

The Court:

1) The present application under Article 227 of the Constitution of India is directed against the order dated 4.7.2009, passed by the learned Civil Judge (Junior Division), 3rd Additional Court at Alipore, in Title Suit No. 238 of 2006.

2) It would appear that the present petitioner happens to be a tenant in respect of the ground floor northern side flat consisting of two bed rooms, one kitchen and one bath cum latrine with entrance at Padmapukur East Lane in premises no. 15/2, within Wattgunj P.S. under the present O.P. Smt. Anjana Sarkar at a monthly rental of Rs.1000/- payable according to english calendar month. It may be pertinent to point out that at the time of

petitioner's induction as a tenant on 6.4.94 Shri Harisadhan Sinha (since deceased) was the owner of the premises in question and petitioner paid a sum of Rs.20,000/- to the said owner as interest free advance as per the agreement to get an amount of Rs.300/- per month adjusted from the rent. After the demise of said Shri Harisadhan Sinha one Munmun Sarkar purchased the suit premises and accordingly she collected rent till 10th April, 2006 and thereafter she transferred the suit premises to the present O.P. It has been alleged that O.P. approached the petitioner stating that she intended to make some addition/alteration in the first floor of the premises to which, the petitioner gave consent. But unfortunately in the name of such addition/alteration O.P. demolished the roof of the first floor. The petitioner raised protest, but to no effect. Thereafter, the petitioner by filing an application under Order 39 Rules 1 and 2 Code of Civil Procedure before the learned Court below prayed for order of temporary injunction restraining the O.P. from dispossessing the petitioner from the suit premises without due process of law. The Court below upon hearing the parties concerned was pleased to pass an order of temporary injunction as prayed for on 7.2.2009. The O.P. also filed written statement in the suit. Thereafter, on 5.6.2009 the plaintiff petitioner by filing an application under Order 39 Rule 7 read with Section 151 Code of Civil Procedure sought for an appointment of an Advocate Commissioner for inspection of the suit premises on some points as depicted in the application in question.

3) The said application under Order 39 Rule 7 read with Section 151 of the Code of Civil Procedure was resisted by the O.P. by filing a written objection

denying the allegations made therein. From the materials on record and also from the submissions of the learned lawyers for the parties concerned it could be gathered that the learned Court below upon hearing the petition under Order 39 Rule 7 read with Section 151 of the Code of Civil Procedure was pleased to reject the same holding inter alia that there is no need to hold local inspection as prayed for inasmuch as order of temporary injunction granted in favour of the petitioner would serve the purpose for holding local inspection.

4) Being aggrieved, the petitioner has come up before this Court praying for setting aside the order impugned and for obtaining the order for holding local inspection.

5) The only point for consideration is whether the learned trial Judge was justified in passing the impugned order or whether the same needs any interference by this Court.

6) Learned lawyer appearing for the petitioner-plaintiff while making submission drew this Court's attention to the materials on record including the contents of the impugned order as also the points relating to holding local inspection and urged that in a case like the present one, the trial Court should not have rejected the prayer for local inspection inasmuch as the learned commissioner appointed by the Court after holding local inspection could furnish the real picture as to existing circumstances of the premises including the alleged factum of alteration and addition made on the first floor. In support of his contention he has relied upon the rulings reported in AIR 1997 Cal 80 (Allahabad Bank V. Sourendra Nath Shaw & Anr.) and AIR 1996 Bombay 96 (Madhukar R. Javle V. Baskar Ramnath Shibad) and strongly contended that in existing circumstances of the case the order impugned refusing the prayer for local inspection has caused serious prejudice to the petitioner as also some inconvenience in the matter of arriving at a just decision.

7) On the other hand, the learned lawyer appearing for the O.P. referring to the materials on record emphatically submitted that learned Court below committed no mistake in passing the impugned order inasmuch as the local inspection prayed for was relating to non-suit property which is untenable in the eye and estimation of law. In support of his contention he has relied upon the rulings reported in AIR 1961 SC 218 (Padam Sen & Anr. V. The State of Uttar Pradesh), AIR 1978 Cal 296 (The Institution of Engineers (India) & Anr. V. Bishnu Pada Bag & Anr.) and emphatically urged that the order impugned cannot be said to be suffering from any legal infirmity and accordingly the instant application deserves to be dismissed.

8) Evidently and admittedly the petitioner happens to be the tenant under the O.P. in respect of ground floor of the suit premises being 15/2, Padma Pukur East Lane under Wattganj P.S., South 24-Pgs. It is also the admitted situation that the landlord-O.P. is residing on the first floor of the said premises. Further it would be pertinent to point out that inspection has been sought for in respect of the non-suit property. The purpose of local inspection is nothing but to collect the information as to existing circumstances of the property in respect of which the inspection is sought

for. The allegation made in the body of the petition for inspection prima prima facie is serious because of the fact that the petitioner/plaintiff has brought out an allegation against the O.P. that the O.P. in the name of making addition and alteration in the first floor has completely demolished the roof of the first floor causing certain inconvenience and damage to the roof of the tenanted portion of the petitioner. Further the action taken by the O.P. creates apprehension in the mind of the petitioner that the O.P. may demolish the tenanted portion of the petitioner for dispossessing him from the suit premises forcibly and illegally.

9) In my considered view, the local inspection as prayed for if allowed shall not cause any prejudice to the O.P. Although, the inspection has been prayed in respect of the non-suit portion of the suit property but the same happens to be the part and parcel of the suit premises as a whole inasmuch as the petitioner resides in the ground floor, while the O.P. resides in the first floor of the premises. The principles of the rulings relied upon on behalf of the petitioner do support such views for granting the prayer for local inspection.

10) Therefore, having heard the submissions of the learned advocate for the parties concerned and also considering the materials on record as well as regard being had to the principles of the rulings relied upon by the respective parties I think it would be expedient and proper to allow the application under Article 227 of the Constitution of India for arriving at a just decision. In this view of the matter I am satisfied to conclude and hold that the learned Civil Judge (Junior Division), 3rd Additional Court at Alipore while passing the impugned order in T.S. No. 238 of 2006 committed mistake and impropriety and as such the order impugned cannot be sustained. Position being so, the impugned order stands set aside. Learned Civil Judge (Junior Division) is hereby directed to allow the application under Order 39 Rule 7 read with Section 151 of the Code of Civil

Procedure filed on behalf of the petitioner by appointing a competent pleader commissioner for holding local inspection as per points mentioned in the body of the application at the cost of the petitioner with direction upon the learned commissioner for holding the inspection within a period of 6 (six) weeks from the date of communication of this order, with instruction to ask the learned commissioner to submit his report within 7 (seven) days thereafter.

There will be no order as to costs.

Urgent xerox certified copy of this order be given to the parties expeditiously, if applied for.

(Md. Abdul Ghani, J.)