

Item No.31
23.02.2026
Ct. No. 6
GB

C.O. 4379 of 2015

Sri Ram Yad Prasad Gupta & Ors.
Vs.
Sri Shreeram Shah & Ors.

Ms. Swebatee Datta
Ms. Poulami Roy

...for Petitioners.

1. The petitioner is aggrieved by an order dated October 29, 2025, passed by the learned Civil Judge (Senior Division), 2nd Court at Howrah in Title Suit No.159 of 2018.
2. By the order impugned, the learned court rejected an application under Order 39 Rule 7 of the Code of Civil Procedure.
3. According to the plaintiffs, local inspection was required to bring on record the clear picture of the suit property. The plaintiffs prayed for appointment of an inspection commissioner.
4. The learned court was of the view that the suit was not for partition of the structure alone. The gift deed filed by the defendant recorded that the building on the suit property was a one storeyed building. If there had been construction over and above the one storey, in that event the same could be brought on record by adducing evidence.

5. This is a suit for partition, upon declaration that the deed of gift was void and not acted upon. The plaintiffs contended that the deed was a paper transaction and as such, not binding upon them. The plaintiffs and defendants had equal share in respect of the property described in Schedule A of the plaint.
6. Further contention of the plaintiffs was that the plaintiffs and the defendants had been possessing the suit property jointly, as co-sharers. The plaintiffs specifically contended that they had 1/7th share each along with the defendants in respect of the suit property described in Schedule A. A prayer for a preliminary decree declaring 1/7th share of each of the parties has been made. A prayer for a final decree of partition by metes and bounds on the basis of the report of the partition commissioner to be appointed after passing of the preliminary decree has also been made. Schedule A of the plaint is quoted below :-

“All that piece and parcel of Mokarari Mourashi bastu land measuring about 3 cottah together with 3 storied building standing thereon comprised within the Municipal holding no. 17, Dr. H.K. Chatterjee Street, P.O. Ghusuri, P.S. Belur, District Howrah – 711107.”

7. Schedule A comprises of three cottahs of land with a three-storeyed building. Thus, the suit has been filed for partition of the abovementioned property. It is for the plaintiff to prove that the schedule A property is a joint property and the building on the land has three

floors. The number of floors is not relevant at this stage.

8. It is the defence case that the property was gifted by their predecessor in favour of defendant no. 1. The deed of gift filed in court indicated that the building constructed on the suit property was a single-storeyed building. The defendant no. 1 claims ownership on the basis of the deed of gift.
9. Under such circumstances, allowing the application for local inspection will amount to fishing out the evidence. It is only upon declaration of the shares of the parties in preliminary form, can the property be partitioned by metes and bounds. The size of the property and the number of floors can be taken into account, at the appropriate stage by the partition commissioner.
10. Accordingly, the revisional application fails and is dismissed.
11. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)