

Title Suit No: 268 of 2019.
CIS Registration No: 268 of 2019.
CNR No. WBSPOD0005192019
JO Code No: WB01267.

Order No.47 dated-31-07-2026.

Today is fixed for hearing of the petition under Order XXXIX Rule 7 of the Code of Civil Procedure, 1908, filed by the defendants on 05-06-2026. Both parties have filed haziras. The plaintiff raised objection against the said petition under Order 39 Rule 7 of the Code of Civil Procedure, 1908.

Heard the Ld. Advocates of both the parties.

Perused the said petition dated 05-06-2026, the objection filed against the same and the case record.

In the petition under consideration the defendants have prayed for an order of appointment of a local inspection commissioner. According to the defendants, the plaintiff has filed instant suit against the defendants for partition and permanent injunction in respect of suit property. According to the defendants, there is a Gramin hospital over Schedule plot no. 973 and there are other co-sharers who are possessing suit plot no. 973 by various acts of possession. The defendants are possessing suit plot by various acts of possession but the plaintiff never possess the suit property. But the plaintiff openly threatened with an ulterior motive to illegally evict the defendants forcefully from the suit property. The said property as well as the nature and character of the same should be shown by way of local inspection otherwise these defendants will not able to prove the existence of impugned hospital in Plot No. 973. Hence defendants have filed the instant petition for local inspection to bring out the clear picture of the suit properties.

The plaintiff has objected to such prayer for appointment of local inspection commissioner by the defendants. The plaintiff has stated that they have filed instant suit against the defendants for partition and permanent injunction in respect of suit property. It is argued by the Ld. Advocate on behalf of the plaintiff that the petition is barred under the principles of Resjudicata. The

defendants have previously filed an application and after contested hearing, this Court rejected the said petition for investigation commission. So, there is no scope for holding any local inspection commission in respect of the suit property. It is also argued by the Ld. Advocate on behalf of the plaintiff that by holding the local inspection commission, the location and extent of the suit plots and surrounding plot cannot be identified and ascertained, so there is no utility of holding local inspection commission in respect of the suit properties. It is further argued by the Ld. Advocate on behalf of the plaintiff that in the settlement map i.e. in the L.R. Settlement map there is no existence of any hospital in the L.R. Plot No. 973 adjacent to the suit plot, so there is no scope of holding the local inspection commission, and the same will not serve the purpose of the defendants showing the location of those suit plots adjacent to each other. Ld. Advocate for the plaintiff argued that in the present suit, the plaintiff is under obligation to prove his case for partition of title and injunction and to prove the same and also to dispose of the same the commission report by a local inspection commissioner is not required. On the other hand, the defendants have admitted the purchase of the suit property by the plaintiff. So, there is no necessity of holding any local inspection commission to ascertain the existence of the land allegedly belonged to the defendants which has no existence in the L.R. Settlement Map. So, there is no scope for identification of the said plot in the current settlement map. Ld. Advocate for the plaintiff also argued that the existence of plot no. 973, is not at all required to get partition in respect of the suit plot mentioned in the schedule of the plaint. Ld. Advocate on behalf of the plaintiff further argued that defendants have filed the instant petition for the purpose of collecting evidence which is not permissible in law. Lastly, Ld. Advocate for the plaintiff argued that defendants have filed this petition with the sole intention of delaying the proceeding of the suit and thus the same should be rejected with cost.

Heard. Perused. Considered.

On a scrutiny of the record, it appears to this court that the plaintiff has got the property from one Rajendra Nath Naskar, Dipankar Naskar, Suchitra Das, Sujata Naskar, Sulekha Sanfui and Supriya Mondal by a registered sale deed being no. 1670 of 2014 and since then the

plaintiff has been owing and possessing the same i.e. 3.286 decimals of land in schedule property of the plaint. It was further stated in the plaint that on 16.05.2019 and 28-06-2019, the defendants threaten to dispose the plaintiff from suit property and also refused to make partition of the suit property. Therefore, the plaintiff's title over said land in the schedule property of the plaint has been clouded; and for this reason, the plaintiff has filed this instant suit. The defendants by filing their W.S. claimed that they are absolute owners of the lands in suit plot no. 973 by way of purchase as well as by way of inheritance. According to the defendants, impugned sale deed being no. 1670 of 2014 executed by said Rajendra Nath Naskar, Dipankar Naskar, Suchitra Das, Sujata Naskar, Sulekha Sanfui and Supriya Mondal; in favour of the plaintiff; is false, manufacture, collusive, void and not acted upon at any point of time. Thus, as per W/S, the plaintiff has nothing in the suit plot no. 973; and he has no right, title and interest in the suit property; and he also never possesses the same at any point of time.

It is the fundamental principle of law of evidence that plaintiff has to prove his case and according to the plaintiff of this instant suit, there is no need of appointment of an investigation/inspection commissioner for the same. Therefore, he strongly opposed against the appointment of a local inspection commissioner under Order XXXIX Rule 7 of the CPC. On the other hand, the defendants have filed the instant petition for appointing a local inspection commissioner under Order XXXIX Rule 7 of the CPC to collect evidence which is required to prove their case in this instant suit. So, prayer of the defendants for appointment of a local inspection commissioner under Order XXXIX Rule 7 of the Code of Civil Procedure, 1908, is nothing but to collect evidence in this instant suit so that they can succeed in this instant suit which is clearly appear to this court on perusal of this instant petition.

It is the settled principles of law that no commission can be appointed under Order XXXIX Rule 7 Code of Civil Procedure, 1908, for collecting evidence by the parties of the suit. In AIR 2000 Cal 91 (92) (DB), the Hon'ble Court held that a commissioner cannot be appointed to collect evidence in respect of damages allegedly suffered by plaintiff in suit for damages.

Thus, it is crystal clear from above mentioned discussion that a local inspection Commissioner under Order XXXIX Rule 7 Code of Civil Procedure, 1908, cannot be appointed for collecting evidence. Therefore, the instant petition filed by the defendants/petitioners for appointing a local inspection Commissioner under Order XXXIX Rule 7 Code of Civil Procedure, 1908, is liable to be rejected on this ground.

Moreover, a local inspection Commissioner under Order XXXIX Rule 7 Code of Civil Procedure, 1908, cannot be appointed to fill up a lacuna which might have been left in the evidence. It is held in 2002 AIHC 4135 (4136) (H) that the local Commissioner cannot be appointed to fill up a lacuna which might have been left in the evidence. But the defendants/petitioners in this case prayed for appointment of a local inspection Commissioner under Order XXXIX Rule 7 Code of Civil Procedure, 1908, to fill up the lacuna in this case. Furthermore, on perusal of the record it clearly appears that this petition is nothing but part and parcel of the dilatory tactics adopted by the defendants.

So, in view of this court, to adjudicate the dispute the appointment of a local inspection Commissioner under Order XXXIX Rule 7 Code of Civil Procedure, 1908, is not necessary at this stage. So, this court is not inclined to hold that a local inspection Commissioner under Order XXXIX Rule 7 Code of Civil Procedure, 1908, is very much required to decide the dispute between the parties at this stage.

Hence, it is

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that the petition for appointment of a local inspection Commissioner under Order XXXIX Rule 7, read with Section 151 Code of Civil Procedure, 1908, dated 05-06-2026 filed by the defendants, is hereby considered and rejected on contest without cost.

Fix – **12.08.2026** for D.W, if any i.d., argument.

Dictated and corrected by me.

Civil Judge (Sr. Divn.)
2nd Court, Baruipur

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