

T.S. - 252/22 (CNR:WBCC01-000835-2022)

Present: Sri Jayanta Koley, Judge, Bench-II. (WB00562)

Order 12

23.06.23

Both parties file hazira. Today is fixed for hearing application under Order 39 Rule 4 along with application under Order 39 Rule 7 CPC filed by the defendants.

Now on consent of both the sides the application under Order 39 Rule 7 CPC is taken up for consideration first. Heard the Ld advocates for both sides. Perused the application whereby defendants have prayed for passing necessary order for hearing local inspection commission in respect of A and B schedule properties on the points for local inspection commission as mentioned in para 6 of the said application.

Upon hearing both the sides and going through the points for local inspection commission it appears that defendants have actually sought for hearing the local inspection commission for ascertaining the measurement, nature of user and possession together with condition of the A and B schedule properties.

However the said application does not contain anything as to how the proposed local inspection commission report will assist this court for disposal of the application under Order 39 Rule 4 CPC or even the application under Order 39 Rule 1 and 2 CPC. That apart from the points of local inspection commission it is also evident that by the same the defendants have intended to fish out evidence regarding possession of the suit property which is not permissible more so when it is the admitted position as per the pleading that A schedule property is the possession of the plaintiff while the B schedule property being in possession of the defendants.

Considering this aspect I find that the prayer for local inspection commission is not entitled to succeed in the given facts and circumstances.

Hence, it is

Ordered

that the application of the defendants under Order 39 Rule 7 read with section 151 CPC dated 24.2.22 stands rejected on contest but without any order as regards to costs.

Fix 28.06.23 for hearing the application of the plaintiff under Order 39 Rule 1 and 2 CPC along with the application of the defendants under Order 39 Rule 4 CPC.

D/C by me

Judge

Judge 2<sup>nd</sup> Bench