

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

Order 13

28.06.23

Both parties file hazira. Plaintiffs files supplementary affidavit against the defendants application under Order 39 Rule 4 CPC. Plaintiff has also filed a separate application under Order 26 Rule 9 read with section 151 CPC praying for appointing an Engineer Commissioner for conducting local investigation commission in respect of the 2nd schedule of the instant application on the points of commission work as mentioned in the schedule to the injunction application on the ground stated in the said application. Copy has been served. Objection has been raised.

At the first instance the hearing of the plaintiff's application under Order 39 Rule 1 and 2 read with section 151 CPC along with the application of the defendants under Order 39 Rule 4 read with section 151 CPC are taken up for consideration.

Heard the Ld. Advocate for the defendants in full. The defendants submitted copies of some reported decisions. Defendants also file some photographs by way of firisti. Let those be kept with this record.

Now when the Ld. Advocate for the plaintiff is invited to make his submission he presses for disposal of the application under Order 26 Rule 9 read with section 151 CPC first. The Ld. Advocate for the defendants does not raise any objection in that respect. Heard the Ld. Advocates for both the sides in respect of the said application.

Upon going through the points for investigation commission work as mentioned in the said application in relation to the disputes involved between the parties with regard to the suit properties, I am of the considered opinion that a report of investigation commission work conducted by an Engineer Commissioner in respect of the suit properties as per the points mentioned in the said application with some addition / alteration is very much necessary and the same will be handy in disposal of both the sides, which are fixed this day for hearing. Ld. Advocate for the defendants, though raises verbal objection but at the same time submits that in the event of the application is allowed, then a short date may be fixed for submission of report and completion of hearing of the two applications which are under consideration this day.

In view of the above position, I am inclined to allow the prayer of the plaintiff under Order 26 Rule 9 read with section 151 CPC filed this day subject to certain addition / alteration on the points for investigation commission work.

Hence it is,

Ordered

that the application of the plaintiff filed this day under Order 26 Rule 9 read with section 151 CPC is hereby allowed subject to conducting of investigation work upon the additional point to the effect of ascertaining the present condition of the 'C' schedule property and whether the construction work in the B schedule property has affected the C schedule property in any manner and if so to what extent.

Let, Shri Rajeev Sarkar be appointed as the Engineer Commissioner for conducting the investigation commission work. He is directed to visit the locale and hold the investigation work according to the points mentioned in the said application and additional point as mentioned above and he shall submit his report positively by 06.07.23. The plaintiff is directed to make payment of a sum of Rs. 10,000/- in favour of the Engineer Commissioner atonce. Writ will be issued after payment of such fees.

Todate for further hearing of the application under Order 39 Rule 1 and 2 read with section 151 CPC as well as application under Order 39 Rule 4 read with section 151 CPC.

D/C by me

Judge 2nd Bench

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