

Order 103

23.11.23

Today is fixed for hearing the application of the plaintiff u/o 26 Rule 9 read with Order 39 Rule 7 and Section 151 CPC dtd 15.3.22.

Plaintiff and the proforma defendants file haziras. However though the Ld. Advocate for the plaintiff is all along present but none appears on behalf of the proforma defendants inspite of repeated calls till 3 p.m. The principal defendants are absent without any step. Accordingly the said application is taken up for consideration in the absence of the defendants and proforma defendants.

Heard the Ld. Advocate for the plaintiff. Perused the application whereby the plaintiff has prayed for passing necessary order to appoint an Engineer Commissioner to hold engineer commission work in terms of the points mentioned in the schedule to the said application mainly intending to ascertain the respective position of the suit properties in relation to each other and to have an idea in respect of the construction raised and is being raised in and around the B schedule property thereby jeopardising the A schedule property or otherwise.

From the plaint it appears that the instant suit is one for declaration, permanent and mandatory injunction and other consequential reliefs on the plea that the defendants are raising illegal and unauthorised construction in and around their B schedule property in the absence of any valid plan thereby damaging the common partition wall between the A and B schedule property.

Considering the points for commission work in the context of the nature of the suit I am of the view that a report of Engineer Commission work as prayed for by the plaintiff subject to certain modification of point no 5 of the said commission work will be of much help to assist this court to resolve the dispute involved between the parties in this suit.

Considered as such, I am inclined to allow the said application subject to certain modification of point no 5 of the commission work.

Hence it is

Ordered

that the application of the plaintiff dtd 15.3.22 u/o 26 Rule 9 read with Order 39 Rule 7 and section 151 CPC is hereby allowed subject to modification of point of no 5 of the commission work to the extent that the Engineer Commissioner shall ascertain the existence or otherwise of stairs and rooms on the ground floor and first floor in the open space shown in the plan.

Let Sri Ranosurja Sarkar (8013285495) be appointed as Engineer Commissioner for the above purpose. He shall visit the locale after issuing notice upon both the parties and hold the Engineer Commission work in terms of the point nos 1 to 4, 6 and 7 and modified point no 5.

Plaintiff is directed to pay to the Engineer Commissioner a sum of Rs. 10,000/- towards the tentative fees and incidental expenses of the commission work by 17.01.24.

Writ will be issued after payment of such fees and incidental expenses.

D/C by me

