

T.S. No.1102/2022(CNR WBCC01-005178-2022)
(J.O. Code No.WB01049)

Order No. : 08

Dated : 16.08.2022

Today is fixed for hearing an application under Order 26 Rule 9 of Code of Civil Procedure.

Ld. Counsels for the applicant/plaintiff and defendants/opposite parties are present. Ld. Counsel for the defendants submitted the matter is already fixed for hearing on 31.08.2022 and therefore, he opposed the prayer for preponing of the hearing of the application under Order 26 Rule 9 of Code of Civil Procedure.

Court after considering the submissions of the Ld. Counsel for the defendants proceeded to hear out the application under Order 26 Rule 9 of Code of Civil Procedure, filed by the plaintiff.

It is submitted by the Ld. Counsel for the petitioner/plaintiff that this Court granted an ad-interim order of injunction on 20.05.2022 restraining the respondents, his men, agents and/or assigns from making wrongful and illegal construction in the suit property being premises no.6, Duff Street, Kolkata – 700006 and also from interfering with the peaceful habitation of the plaintiffs and other family members and/or legal heirs of Late Kunja Lall Dutta and Late Kanai Lall Dutta in the suit schedule property.

Ld. Counsel for the petitioner next submitted that despite such order being passed by this Court on 20.05.2022, the defendants invaded and/or threatened to invade the petitioner's right of use and enjoyment of the suit property by taking illegal steps to forcefully occupy such portion of the suit property, which falls within petitioner's 1/20th share in suit schedule property.

Ld. Counsel next submitted that despite repeated demands and / or requests the defendants intentionally neglected and deliberately refused to partition the suit properties and maintain status quo, in respect of the present possession of the suit property according to the respective rights and/or shares of the parties.

Heard the submissions of the Ld. Counsel for the petitioner and after scanning all the annexures, annexed to the application under Order 26 Rule 9 of Code of Civil Procedure, filed along with the application under Order 26 Rule 9 of Code of Civil Procedure, I did not find any document annexed with the petition under Order 26 Rule 9 of Code of Civil Procedure that can be accepted as any proof of alleged disturbance to have been created by the defendants and/or encroachments made in the suit schedule property by the defendants after passing of the order dated 20.05.2022. All annexures alleging attempt to create

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disturbances and/or encroachments in the suit schedule property either by the defendants and/or their men, agents or representatives are of the year 2021.

In such circumstance, the prayer of the petitioner/plaintiff to engage an Advocate Commissioner for the purpose of visiting the suit property and carry local investigation and/or inspection to ascertain the encroachment alleged to have been made by the defendants violating the ad-interim order of injunction in respect of the suit property is considered and disallowed.

Hence,

Ordered

The application under Order 26 Rule 9 of Code of Civil Procedure is heard on contest and rejected.

The matter is already fixed for hearing injunction petition after exchange of affidavits by the parties on 31.08.2022.

Dictated and corrected by me,

Judge,Bench- II

Judge, Bench- II
City Civil Court , Calcutta