

T.S. 1659 of 2019

Order No. 5

15.01.2020

Plaintiff and defendant take steps through their respective Ld. Advocate. Today is fixed for hearing the application under Order 39 Rule 7 CPC filed by the defendant.

Accordingly, the record is taken up for the same.

Plaintiff filed has written objection against application under Order 39 Rule 7 CPC after supplying the copy to other side. The plaintiff has also filed affidavit-in-reply against the affidavit-in-opposition in respect of under Order 39 Rule 1 and 2 CPC after supplying the copy to other side.

In course of hearing, Ld. Lawyer for the defendant submits that to bring out the real picture before the court, the prayer for local inspection should be allowed and it will cause no prejudice to the either of the parties.

It is further submitted that the defendant in his case has stated in the opposition against the injunction application that the their father Late Jitendra Neogi was the actual tenant under the landlady, Sovana Devi and thereafter Shantimoy Bhattacharya in respect of suit shop-room. The said Sovana Devi being owner/landlady used to receive rent receipt for herself and on behalf of her minor son. His father Jitendra Nath Neogi died in the year of 1964. At that point of time, Subhash Neogi being the elder brother of defendant, transferred the tenancy in his name and second elder brother Bablu @ Dilip Neogi were minor.

As such, the landlady issued rent receipt in the name of the elder brother, Subhash Neogi. Said Subhash Neogi did not carry on any business nor used to reside in the said shop-room.

On the contrary, the said shop-room is partitioned in a plywood in respect of 2/3rd and 1/3rd portion occupied and by their second brother Dilip Neogi and himself respectively for business purpose. So, local inspection to be made on the following points:

(I) that Inspection Commissioner has to visit suit building and note down the numbers of business articles of the defendant and also of his brother Dilip Neogi lying therein which are identified by the defendant including mode of user.

(II) The Commissioner has to visit the suit building, ground floor and note down the partition if any in the suit room and take measurement of such portion thereof including mode of user.

(III) To take photographs of the partition inside the suit room and also of the business articles of the defendant as identified by the defendant.

(IV) To note down any other local features that may be pointed out by the parties in suit at the time of holding commission.

Ld. Lawyer for the plaintiff in his turn has strongly raised objection by submitting that the defendant is having no right, title interest in the suit shop-room. He is a mere stranger and local inspections cannot be made to fish out or collect the evidence.

It is further submitted that defendant in his application for local inspection in para 3 has clearly stated that the defendant specifically stated in his affidavit-in-opposition against the application under Order 39 Rule 1 and 2 filed by the plaintiff that he is in possession of the schedule tenancy and carrying on business on the ground stated in his written objection against injunction application.

In his written objection, especially in para 3 (A) defendant has stated in his own application that their father died in the year of 1964 but the rent receipt filed by the defendant himself clearly shows that suit shop-room stands in the name of Subhash Chandra Neogi as a tenant in the year of 1956 and Subhash Chandra Neogi is one of the partner of the plaintiff's partnership firm. There is no any document filed by the defendant to show that suit shop-room was let out as a tenant of their father Late Jitendra Neogi. Late Jitendra Neogi was never ever a tenant of the suit premises.

On the contrary, the business of New Amal Bhandar in respect of suit shop-room also stands in the name of Subhash Chandra Neogi. So, the submission allegation made by the defendant is out and out false and to fish out the evidence has filed this application for local inspection which is to be rejected in limini.

I have carefully gone through the application of the commission work and also the objection of injunction application filed by the defendant along with all annexures.

It is fact that the subject matter of the dispute is one shop-room as morefully specified in the schedule of the plaint and the number of rent receipts filed by the plaintiff and another rent receipt filed by the defendant as annexure P shows that rent receipt in respect of suit shop-room clearly stands in the name of Subhash Chandra Neogi and date is 1st December 1956 and another rent receipt shows that 26 June 1956 in the name of Subhash Chandra Neogi at the business style New Amal Bhandari, trade license issued by CMC dated 017.02.1957 in the name of New Amal Bhandar (proprietor, Subhash Chandra Neogi) in respect of suit shop-room and it is astonished to say that the defendant in his written objection has stated that his father Jitendra Neogi was the actual tenant in respect of suit shop-room and rent receipt issued in favour of his father and his father died in the year of 1964. If that be so, then how is it possible to issue rent receipt after the death of their father in the name of defendant's elder brother Subhash Neogi in the year of 1956 i.e. 8 years back of the death of his father.

So, this fact made by the defendant is out and out false.

Apart from it, there is no any document to show that defendant has been doing any business in their name as a proprietor or owner. Even there is no any name of their brother Dilip Neogi. Defendant has also not filed any copy of rent receipt in the name of their father.

On the contrary, the defendant has filed an application praying for inspection on one of the point that inspection Commissioner is to note down the number of articles in the

suit premises of the defendant as identified defendant and mode of use of the articles and also to note down whether partition if any and measurement of portion and mode of user. So, this prayer for local inspection on the above said points are nothing but to fish out or collect the evidence for the defendant which is not permitted by law.

Therefore, in the light of the discussion made above and relying upon ruling AIR 1978 CALCUTTA 296, I hold that prayer for local inspection is having no merit and liable to be rejected.

Hence, it is

Ordered

that the prayer under Order 39 Rule 7 CPC filed by the defendant stands rejected on contest without costs.

To 10.02.2020 for hearing of the injunction application.

Dictated & corrected by me:

Judge

Judge