

Ejectment Suit No. 35 of 2022

Present: Shri Subhrajit Basu [J.O. Code: WB01238]
Judge, Bench-IV, City Civil Court, Calcutta

Order No. 28
27.08.2025

The learned advocates of the plaintiffs, the defendant and the proforma defendants are present.

The matter is fixed today for passing order in respect of the application of the plaintiffs under Order XXXIX Rule 7 of the CPC dated 15.11.2022 and this Court has already heard the learned advocates of the parties as regard the said application on the last occasion.

The application of the plaintiffs dated 15.11.2022 is now taken up for passing order.

The defendant has filed written objection against the instant application.

This Court has perused the relevant pleadings and materials on record.

It is, *inter alia*, stated in the application that the present suit is for eviction of the defendant and recovery of *khas* possession of the suit property and one of the grounds of eviction pleaded in the plaint is that the defendant has made addition and alteration at the suit property without the written consent of the plaintiffs. As such, it is contended by the plaintiffs that for proper and effective adjudication of the suit, an Advocate Commissioner may be appointed by this Court to hold local inspection of the suit property for the purposes mentioned in schedule of the application with a direction to submit a report in this regard before this Court.

In the written objection, the sole defendant has categorically denied the allegations of making any addition or alteration in the suit property as alleged and she, *inter alia*, stated that the instant application is nothing but an attempt of the plaintiffs for fishing out evidence in the proceeding and accordingly, the defendant has prayed for dismissal of the instant application.

The instant suit is for eviction and recovery of possession and indeed a ground of eviction in the suit is that the defendant allegedly made unauthorised addition and alteration at the suit property without the plaintiffs' written consent.

In this regard, this Court has also perused the schedule of the instant application containing the proposed points for local inspection.

Upon consideration of the matter, this Court is of the view that in the facts and circumstances of the case, the specific pleading of the plaintiffs as regards unauthorised addition and alteration of the suit property allegedly made by the defendant has a significant bearing in this suit for eviction and recovery of possession and none of the parties of this suit shall be prejudiced in any manner if the actual and correct position as regards the present condition of the suit property is brought on record before the Court by way of a report of an Advocate Commissioner on local inspection. This Court is also of the view that the points for local inspection as mentioned in the schedule of the instant application are essential and relevant to bring out the truth before this Court for proper and effective adjudication of the instant suit.

Considering such circumstances, the instant application of the plaintiffs dated 15.11.2022 under Order XXXIX Rule 7 of the CPC is hereby allowed.

Accordingly, **Smt. Esha Mazumdar, Advocate** is appointed as the Commissioner for holding local inspection of the suit property.

The Learned Commissioner is directed to hold local inspection of the suit property as described in the schedule of the plaint on the following points –

- a. to make inspection of the suit property as described in the schedule of the plaint and to take measurements of the same;
- b. to prepare a sketch map of the suit property;
- c. to take photographs of the suit property;
- e. to take note of any other local or special feature, if any, observed and/or pointed out by the parties or their learned advocates at the time of holding the local inspection.

The Learned Commissioner is directed to file a report in this regard before this Court on the next date fixed in this matter.

The Learned Commissioner would get a remuneration of Rs.10,000/-, which shall include her fees and other expenses incurred by her.

The plaintiffs are directed to make payment of the aforesaid amount in cash to the Learned Commissioner against due receipt within 7 (seven) days from this date and to file the payment receipt before this Court within 10 (ten) days from this date.

The Dealing Assistant will issue the Writ only after filing of the payment receipt.

Thereafter, the Learned Commissioner shall fix a date and time of holding the local inspection and such date and time should be duly communicated in advance by the Learned Commissioner to the learned advocates of the parties.

The parties are directed to co-operate with the Learned Commissioner during the holding of the local inspection and they shall not take any adjournment.

To **12.11.2025** for filing of Commissioner's report and framing of issues.

At my dictation

**Judge, Bench-IV
City Civil Court, Calcutta**

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City Civil Court, Calcutta**