

Title Suit - 28 of 2021

Order No. 39 dated 14.08.2024

Today is fixed for hearing of the petition u/Or 39 r 7 CPC.

Plaintiff filed hazira.

Defendant Nos. 1 & 8 filed hazira.

Ld. Advocate for the plaintiff submitted that on 20.06.2024 the defendant No. 8 in collusion with defendant No.1 raised illegal construction over the schedule suit property and violated the temporary injunction order passed by this Court. So to ascertain the actual position and to bring the real picture before the Court for proper adjudication of the suit it is necessary that a commissioner for inspection be appointed for investigation of the suit property. Plaintiff undertake to bear the cost of the commission work. So, a commissioner needs to be appointed for holding local inspection as per the points of the schedule.

Ld. Advocate for the defendant raised vehement objection.

On careful perusal of the case record, it is seen that plaintiff has prayed for appointment of local inspection commissioner for depicting the clear picture of the suit property. Plaintiff prayed that the commissioner should hold local inspection in respect that whether any new construction was done or not, whether any construction was taken place or not, detailed local feature and some still photographs and to submit a report in this respect. This Court is of the opinion that the commissioner cannot determine the age of the construction as to whether the construction is newly made or not. As such this Court finds that amid such controversy an investigation is needed to explore the truth lies behind the curtain for proper adjudication. Therefore, this Court thinks it to be sensible to allow the petition u/Or 39 r 7 CPC. Thus the relief sought for is hereby granted to the extent that the commissioner will give the detailed local feature, still photographs, whether there exists any construction has taken place over the suit property or not.

Hence, it is

ORDERED

The aforesaid petition u/Or 39 Rule 7 of C.P.C. filed by the plaintiffs is hereby allowed on contest without any order as to cost.

That **Sri Abhijit Ghosh**, practicing advocate of this Court, is hereby appointed as Advocate Commissioner to hold commission work at the locale and on the points mentioned in the schedule of the commission petition.

The Ld. Commissioner is directed to submit his commission report by 01.10.2024 positively. Parties are directed to co-operate with the Ld. Commissioner without taking any adjournment on any ground. The cost of the commission work is hereby fixed at **Rs. 2000/- (Rupees Two Thousand) only** payable by the plaintiffs by hand to the Ld. Advocate Commissioner along with the copy of Commission petition on proper receipt.

Writ of the Commission work shall be prepared on submission of receipt of payment of cost of commission work and the documents to the Ld. Commissioner accordingly.

The aforesaid petition u/O 39 Rule 7 of C.P.C. filed by the plaintiffs thus disposed of.

To **12.09.2024** for payment of cost by the plaintiff and issuance of writ.

Dictated & corrected by me

CJ

Civil Judge (Jr.Div.)
Amta, Howrah