

Title Suit - 84 of 2023

Order No. 10 dated 05.03.2024

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

Plaintiff filed hazira along with a petition for extension of ad interim order of injunction.

Defendant No.1 filed hazira, WO against Order 39 Rule , along with an adjournment petition for filing WO and WS which is allowed on the ground stated therein.

Ld. Advocate for the plaintiffs submitted that the plaintiffs have filed this suit against the defendants seeking declaration, injunction and partition but on 28.09.2023 the defendant inspite of Court's injunction order have constructed the building over the suit property. As such they are violated the Court's order of injunction. 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. Plaintiffs 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 No.1 raised vehement objection stating that the local inspection commissioner has no jurisdiction to take any measurement like a survey commissioner. Moreover, in point No. 4 of the schedule the plaintiffs are trying to create evidence. So this petition should be rejected.

On careful perusal of the case record, 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 except the point No. 4 of the schedule mentioned in the petition. Thus the relief sought for is hereby granted.

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 06.04.2024 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 **16.03.2024** for payment of cost by the plaintiffs and issuance of writ.

Ad interim is extended till 06.04.2024.

Dictated & corrected by me

CJ

Civil Judge (Jr.Div.)
Amta, Howrah