

P.S. 27 of 2022
Reg. No. 27 of 2022
CNR No. WBMD06-000027-2022

Order No. 11 / Dated 15.11.2022.

Defendant Nos. 1-5 are present by filing hazira. On prayer of Plaintiff, the ad interim order of temporary injunction is extended till next date.

Plaintiff files two separate petitions Under Section 151 of the Code of Civil Procedure and Order XXXIX Rule 7 of the Code of Civil Procedure which are supported by affidavit. Copies served.

Learned Advocates for both sides are present.

Perused the record.

It appears from the record that both the Plaintiff and Defendant Nos. 1-5 filed petitions for local inspection in respect of the suit property. As both the petitions relate to hold local inspection over the suit property in order to bring the present status of the suit property before this court and in order to avoid misuse of judicial process, this court is inclined to take up both the petitions for hearing together.

Heard Ld. Advocate for both sides.

The Plaintiff by filing the petition have stated that he filed the instant suit for partition and the Ld. Court directed the parties to maintain status quo in respect of nature, character and possession of the suit property which is still in force. But in spite of the order of Court, Defendants are trying to raise construction work over the suit property. As such, the Plaintiff has prayed for local inspection before this court in order to bring out the actual condition of the suit property at this stage.

The Defendant Nos. 1-5 by filing the petition have stated that the Defendants have dwelling house over the suit property and the said dwelling house is almost broken condition and it can collapse anytime in heavy rain and this can lead to various damages. As such, the Defendant Nos. 1-5 has prayed for local inspection before this court in order to bring out the actual condition of the suit property at this stage.

Heard Ld. Advocates for both sides at length.

At this point, it required to mention here that Order XXXIX Rule 7 of the Code of Civil Procedure empowers the court to make an order for detention, preservation or inspection of any property, which is the subject matter of the suit, if the Court feels that such action is necessary or expedient for the purpose of obtaining full information or evidence. In the case in hand, it appears to this court that it is a partition suit and it is necessary for this court to get the actual position of the suit property at this stage for proper adjudication of the matter in dispute, which can be determined by way of local inspection. It also appears to this court that it will not tantamount to collection of evidence as it is settled position of law that report of local inspection shall not be evident unless otherwise proved.

Therefore, this court is inclined to allow the prayer of the Plaintiff and Defendant Nos. 1-5 for local inspection in respect of Point Nos. 1, 2 & 4 of the local inspection petition filed by the Plaintiff and Point No. 2 of the local inspection petition filed by the Defendant Nos. 1-5.

Hence, it is,

ORDERED

that both the petitions u/o. XXXIX rule 7 CPC filed by the Plaintiff and Defendant Nos. 1-5 are hereby allowed on contest.

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Let Pradip Singha Roy be appointed as a pleader Commissioner for conducting the local inspection.

Ld. Advocate Commissioner is directed to hold the local inspection in respect of Point Nos. 1, 2 & 4 of the local inspection petition filed by the Plaintiff and Point No. 2 of the local inspection petition filed by the Defendant Nos. 1-5 after serving notice on both parties and their respective Advocates and after observing all legal formalities and Covid – 19 protocol.

Both the Plaintiff and Defendant Nos. 1-5 are directed to pay Rs. 1,600/- i.e. Rs. 800/- each as provisional cost of the Commissioner. The Plaintiff and Defendant Nos. 1-5 are also directed to supply the copy of local inspection petitions and other relevant documents to Ld. Commissioner for holding the local inspection.

Writ will be issued after payment of the Commissioner's cost.

To 03.04.2023 for Commissioner's report.

Dictated & Corrected by me.

C.J (Sr. Divn.), Lalbagh, Msd.
J.O. Code – WB1116.

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