

P.S.- 426 of 2022
Reg No. 426 /2022

Order No. 14/ Dtd. 12.10.2023.

Today is fixed for hearing of the petition u/O. 11, R.2, CPC dated 04.07.2023.

Plaintiff is present by filing hazira and has filed a petition for extension of ad interim order of injunction.

Prayer of plaintiff is considered and allowed.

Ad interim order of injunction is extended till date.

The petition u/O. 11, R. 2 , CPC is taken up for hearing.

Heard both sides.

Perused the petition.

It appears that the Plaintiffs have filed the instant petition on the basis of the plea taken by the Defendant no. 1 in his W.S and W.O regarding defect of parties and non-inclusion of entire ejmali property.

This is a suit for partition. Having considered the aforesaid aspects, this court is of the view that the two petitions u/o 11 rule 2 of CPC are necessary to be allowed.

Hence, it is,

ORDERED

that the petitions u/o 11 rule 2 of CPC dated 04.07.2023 is hereby allowed on contest.

Defendant nos. 1 is directed to give reply to the interrogatories.

To _____ for injunction hearing and reply to the interrogatories and S/R of suit upon defendant nos 2 and 3.

Plaintiff is directed to take fresh steps in respect of suit upon the defendant nos. 2 and 3 at once.

Dictated & Corrected by me.

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

CJ(Sr. Divn.), Lalbagh, Msd.

Later

The record is taken up for hearing of petition under Order 39 Rule 7, CPC.

Heard Learned Advocates of both sides.

Perused the petition under Order XXXIX Rule 7, CPC, written objection and other materials on record.

It appears that the defendant no.1 has filed a petition under section 151, CPC praying for leave of the court to repair the existing room and to complete construction of new rooms. The defendant no.1 prays for inspection of the suit premises to bring before this court the actual present status of the suit premises at this stage.

The Defendants by filing objection has contended that the local inspection sought for will tantamount to collection of evidence and that the points on which local inspection has been sought for cannot be ascertain by local inspection and that the defendant no.1 is trying to legalise the illegal construction under the guise of the instant petition for local inspection.

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At this point, it requires 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 there is an ad-interim order upon plaintiff and defendant no.1 to maintain status quo in respect of nature, character and possession of the suit property passed by this court vide Order No. 03 dated 07.07.2022, and the defendant no.1 has sought for permission of the court for repair of his existing structure in the suit property and has also sought for permission to complete their new construction in respect of which they have got sanctioned plan as it is their reasonable requirement. It appears to this court that it is necessary 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 the points on which local inspection is sought for does not involve collection of evidence as it does not involve examination of witnesses and it is settled position of law that report of local inspection shall not be evident unless otherwise proved. Moreover, it appears to this court that till date no local inspection has held over the suit premises.

Therefore, this court is inclined to allow the prayer for local inspection of the defendant no.1.

Hence, it is,

ORDERED

that the petition under Order. XXXIX Rule 7 CPC is hereby allowed on contest.

Let **Swetak Kumar Saha** be appointed as a pleader Commissioner for conducting the local inspection.

Learned Advocate Commissioner is directed to hold the local inspection in respect of all the point as mentioned in the local inspection petition filed by the defendant no.1 after serving notice on both parties and their respective Advocates and after observing all legal formalities and Covid – 19 protocol.

The defendant no.1 is directed to pay Rs. 1,600/- as provisional cost of the Commissioner. The defendant no.1 is also directed to supply the copy of local

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inspection petitions and other relevant documents to Learned Commissioner for holding the local inspection.

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

Let a copy of this order be supplied alongwith the writ.

To _____ for Commissioner's report.

Dictated & Corrected by me.

C.J (Sr. Divn.), Lalbagh, Msd.

C.J (Sr. Divn.), Lalbagh, Msd.

J.O. Code – WB1116.

Later

Defendant no.1 files reply in respect of interrogatories.

Let it be kept with the record.

Todate for steps by plaintiff in respect of reply and injunction hearing.

Dictated & Corrected by me.

C.J (Sr. Divn.), Lalbagh, Msd.

C.J (Sr. Divn.), Lalbagh, Msd.

J.O. Code – WB1116.

Misc 04/23

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Today is fixed for S/R, P/R and A/D.

No S/R received yet.

To _____ for S/R, P/R and A/D.

C.J (Sr. Divn.), Lalbagh, Msd.

C.J (Sr. Divn.), Lalbagh, Msd.

J.O. Code – WB1116.