

**EJECTMENT SUIT NO. 187 of 2004 Reg No.364 of 2014)**  
**C.N.R No. WBPS01-000310-2004**

**IN THE 4TH BENCH, PRESIDENCY SMALL CAUSE COURT**  
**PRESENT: SMT. ARCHITA SEN, JUDGE BENCH-4, PRESIDENCY**  
**SMALL CAUSE COURT.**

**ORDER NO- 119**  
**DATED 18.11.2025:**

Today is fixed for further evidence for the defendants. Plaintiffs as well as defendants file separate attendance through their respective Ld. Advocates.

At this stage the defendants file a petition under section-XXXIX Rule 7 of the C.P.C along with a petition with a prayer for taking off the suit from the evidence board.

Heard both sides. Perused the record.

Considered.

The prayer is allowed.

Let the suit be taken off from the evidence board.

Ld. Advocate for the plaintiffs submitted that he will not file any written objection against the petition for local inspection. Whatever objection the plaintiffs have against the instant prayer of the defendants, those will be raised verbally by the Ld. Advocate.

So the said petition for local inspection is taken up for hearing.

Heard for the both sides in full. Perused the record including the instant petition.

Considered.

The instant petition contemplates an Order appointing the Advocate Commissioner for inspection of the ground floor of the suit house. It is submitted on behalf of the defendants that though plaintiffs' accommodation as well as defendants' accommodation at the suit house were inspected by the Ld. Advocate Commissioner who was appointed at the instance of the plaintiffs, but during the cross examination the Ld. Advocate Commissioner stated that there were two rooms at the ground floor of the suit house which were under lock and key, for which those two rooms could not be inspected. He did not take the measurement of the courtyard also. So the ground floor of the suit building needs to be inspected again.

Ld. Advocate for the plaintiffs raised strong objection against the prayer of the defendants mainly on the ground that the suit house has already been inspected and the Ld. Advocate Commissioner filed the report long ago. Thereafter the evidence of PW-1 and the Ld. Advocate Commissioner was completed. Even the evidence of DW-1 has been completed. At this stage the defendants again brought the prayer for inspection which denotes that they are only interested to drag the suit. Apart from that it is also argued by the Ld. Advocate for the plaintiffs that even if there is a courtyard at the ground floor of the suit building, the measurement of which was not taken by the Ld. Advocate Commissioner, then also it is the choice of the plaintiffs to fix the place within the suit house, which they will use as garage. Banking on these grounds, the plaintiffs payed for rejection of the instant petition.

True that inspection of the accommodations available to both the parties at the suit house, have already been inspected by the Advocate Commissioner, report has been submitted, in fact the Ld. Advocate Commissioner has been examined before the Court. But the statements made by PW-2, i.e. the Ld. Advocate Commissioner, during the cross examination by the defendants, to the effect that two rooms at the ground floor of the suit house were under lock and key and the measurement of the courtyard has not been taken, can not be ignored. In the report also it can be seen that the Ld. Advocate for the defendants submitted before the Ld. Advocate Commissioner that there are two other rooms of the plaintiff at the ground floor which are under lock and key. The Secretary of the plaintiff Trust Estate did not deny this fact, rather he stated that those two rooms are in possession of the families of the deceased trustees namely Subhas Paul and Debasis Paul. So the existence of two rooms at the ground floor which are under lock and key is not the mere submission of the Ld. Advocate for the defendants. The plaintiffs also admitted that those rooms exists and are in possession of extended part of the plaintiff Trust. In spite of that those rooms were not inspected. These statements trigger that the inspection of the plaintiffs' accommodation at the suit building is incomplete. So the picture of plaintiffs' accommodation which has come before the Court through the inspection by the Ld. Advocate Commissioner, does not depict the entire scenario. In such premises, defendants are not unjustified in taking out the instant petition. But so far as the stage of the suit is concerned, it has to be stated that delay has occurred in taking action by the defendants. Definitely delay has taken place, but the trial has not been concluded yet. The harassment caused by the delay in filing the instant petition by the defendants can be mitigated by the pecuniary means. But if the prayer of the defendants is turned down, their interest will be prejudiced. So far as the argument of the plaintiffs regarding the choice of place for

using as garage is concerned, it is to be stated that the preference of the plaintiffs will be considered at the time of final adjudication. But for that the entire evidence shall come before the Court which will help in appreciating the dispute in hand. For the delay this Court is inclined to impose cost upon the defendants.

In the opinion of the Court, the points that are being forwarded for the inspection, do not appear to be an attempt of fishing out of evidence looked from this stage of the case. In view of such circumstances, this Court intends to pass the following order--

O R D E R E D

That let Subhasis Pal learned Advocate of the Presidency Small Causes Court, Calcutta, Bar Association be appointed as the learned Pleader Commissioner for the purpose of this case.

His fees, considering the work and distance, is fixed at ₹8000/- which is to be paid by the defendants. The defendants are directed to pay the fees of the Ld. Pleader commissioner to him by hand within 15 days hereof.

Writ will be issued on payment of fees.

On receipt of writ the learned commissioner is required to do the needful inspection in respect of the points as stated in the petition dated 18.11.2025, after duly notifying the parties and/or their respective pleaders.

The learned commissioner is requested to submit his report by the next date positively.

The defendants are directed to submit the relevant papers within 15 days hereof failing which necessary orders shall be passed.

The petition dated 18.11.2025 under order XXXIX Rule 7 of the Code of Civil Procedure is thus disposed of on contest and with cost of Rs.3,000/- payable to the plaintiffs.

To 16-01-2026 for payment of cost by the defendants to the plaintiffs, commissioner's report and steps by the defendants in meantime.

Typed, Corrected and Printed by me.

Judge, Bench-4  
Presidency Small Cause Court.  
J.O Code WB01174

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