

Ejectment Suit 199 of 2020.

[ CNR No WBPS 01 000332 2020 ]

Before – Sonia Majumdar- Ld. Chief Judge.

Order No:-18.

31-01-2023.

Today is fixed for passing order in respect of petition u/o-39 Rule 7 of C.P.C filed by the plaintiff dated 05-11-2022 and framing of issues together with taking steps by the defendant for payment of due maintenance charges and corporation taxes in terms of order dated 05-05-2022. Parties file haziras.

Record is taken up for passing order.

This is an application filed u/o-39 Rule 7 of C.P.C by the plaintiff on 05-11-2022 wherein the plaintiff has prayed for appointment of an Advocate Commissioner with a direction to hold local inspection in terms of schedule of inspection as mentioned in the instant petition.

At the time of hearing, Ld. Advocate for the plaintiff submitted that the plaintiff has filed the instant suit against the defendant mainly on the ground of addition and alteration and changing of nature and character of the suit by the defendant without prior permission of the plaintiff and also on the ground of subletting and creating nuisance and annoyance caused by the defendant and his men and agent . Accordingly, by filing the instant petition, plaintiff is praying for appointment of an Advocate Commissioner to hold local inspection of the suit property in order to ascertain the extent of unauthorized construction carried out by the defendant as well as to ascertain and identify the person/persons in occupation of the suit premises and to note the nuisance and annoyance created by the defendant and his sub-tenants.

Against the instant petition , affidavit-in-opposition has been filed by the defendant on 11-01-2023 wherein the defendant has denied all the materials allegations made in the petition.

*p.t.o....*

At the time of hearing, Ld. Advocate for the defendant raised vehement objection and submitted that the petition is not maintainable in the eye of law. Besides, the points of inspection, if allowed, tantamounts to collection of evidence which is not permissible under the law. He prayed for rejection of the petition with cost.

Heard both sides. Perused the petition, the affidavit in opposition and materials on record.

Considered.

Careful perusal of the provisions as laid down in Order 39 Rule 7 of C.P C goes to show:-

*“ The Court may, on application of any part to a suit and on such terms as it thinks fit-*

*(a) make an order for detention, preservation or inspection of any property which is the subject matter of such suit, or as to which any question may arise therein*

*(b) for all or any of the purposes aforesaid , authorize any person to enter upon or into any land or building in the possession of any other party to such suit and*

*(c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.”*

Now, careful scrutiny of the schedule of inspection as mentioned in the petition reveals that plaintiff has prayed for appointment of Advocate Commissioner to ascertain the alleged unauthorized construction and changing of nature and character of the suit premises by the defendant and also to ascertain and identify the person/ persons and their names present and in occupation of the

*contd.....*

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suit premises and to ascertain the nuisance and annoyance being created by the defendant and his alleged sub- tenants. This Court finds that an Advocate Commissioner is not a technically qualified person to examine and report regarding the alleged unauthorized construction carried out by the defendant. This is the work of a structural engineer. Regarding the other points of subletting and creating nuisance and annoyance by the defendant, this Court finds that these allegations have to be substantiated by the plaintiff with cogent evidences . Appointment of an Advocate Commissioner from Court is neither permissible under the law for collecting evidences in favour of one party, nor it will be helpful for the Court in any way to adjudicate the real dispute between the parties. Admittedly, the suit has not been filed on the ground of reasonable requirement of the suit premises. So, question of ascertaining accommodation available to the parties does not arise. Therefore, this Court finds that the instant petition is not entertainable in the eye of law.

Accordingly,

it is

Ordered

that the u/o-39 Rule 7 read with Section 151 of C.P.C filed by the plaintiff dated 05-11-2022 is considered and rejected on contest but without cost.

p.t.o.....

To ( **24-04-2023** ) for framing of issues together with taking steps  
by the defendant for payment of due maintenance charges and  
corporation taxes in terms of order dated 05-05-2022.

Chief Judge.

J.O .Code:- WB 01128