

Ejectment Suit 200 of 2023.

[CNR No. WBPS01 -000433 -2023]

Before – Ashutosh Kumar Singh- Ld. Chief Judge.

07.

20-02-2024.

Today is fixed for hearing of petition u/o- 39 Rule 7 read with Section 151 of C.P Code filed by the plaintiffs dated 01-12-2023, w/o if any in the mean time.

Parties file haziras. Defendants file W/O against the plaintiff's petition u/o- 39 Rule 7 read with Section 151 of C.P Code dated 01-12-2023. Copy served. Let the same be kept in the case record.

Parties are found present on call. The matter is taken up for hearing.

Heard both sides. Perused the petition, its W/O filed by the defendants this day, as well as materials on record.

Considered.

By filing the application petition u/o-39 Rule 7 read with Section 151 of C.P Code dated 01-12-2023, plaintiffs have prayed for appointment of an Advocate Commissioner to hold inspection and take note and measurement of the accommodations available to the plaintiff as well as defendant in terms of the schedule mentioned in the petition since the plaintiffs have filed the instant suit on the ground of reasonable requirement along with the other grounds.

At the time of hearing , Ld. Advocate for the plaintiffs prayed for allowing his petition.

Against the petition , defendants have filed W/O today denying all the materials contended in the petition.

At the time of hearing, Ld. Advocate for the defendants submitted that the defendants have got no objection against point no 1 & 2 as mentioned in the schedule of the instant petition however, regarding

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point no 3 and 4 of points of inspection, defendants have got strong objection since an Advocate Commissioner is neither a qualified person to assess any illegal or unauthorised construction alleged to have been made by the defendant nor the Ld. Commissioner can collect or fish out any evidence regarding the encroachment of the common passage by the defendant as alleged by the plaintiff since the same is not permissible under the law.

Heard submissions from the parties.

Perusal of the plaint reveals that plaintiffs have filed in the instant suit for eviction of the defendants from the suit premises on the ground of reasonable requirement of the suit premises along with other grounds . On the contrary, Defendant has denied the same in his written statement. Therefore, in order to ascertain the actual accommodation available to the parties , and in order to properly adjudicate the real dispute between the parties, local inspection of the premises in question is found necessary.

Regarding the objection raised the defendants in respect of point no 3 & 4 of the schedule of inspection as mentioned in the petition, this Court finds that the same are sustainable in the eye of law because an Advocate Commissioner neither can collect evidences for either of the party nor he/she can assess regarding any illegal/ unauthorized construction since he/she has no expertise in this field.

Therefore, this Court finds that the instant petition filed by the plaintiff may be allowed but subject to modifications.

Accordingly ,

it is,

Ordered

That the petition u/o- 39 Rule 7 read with Section 151 of C.P Code dt 15-09-2023 filed by the plaintiff is hereby allowed on contest in part with modifications.

contd.....

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07.

(contd.....)

20-02-2024.

Let Sri TARUN BASU (Enrolment No WB/620/1999) a practicing advocate of this Bar be appointed as Ld Commissioner to hold inspection in terms of the schedule mentioned in the instant application on point no (1) ,(2) & (5) only and not on point no 3 & 4, subject to payment of cost Rs. 11,000/- by the plaintiff towards the fees of the Ld. Commissioner.

Ld commissioner is directed to visit the locale after due service of notice upon both sides as well as their Ld advocates well in advance and conduct the commission work in presence of both parties in accordance with law in terms of the terms and conditions as specified in this order and submit a report thereof before the Court, preferably within one month from the date of receipt of the writ.

Parties are directed to provide the copy of the instant application, plaint, and other necessary documents which shall be required to facilitate the commission work to the Ld Commissioner.

Both parties are directed to extend full cooperation to the Ld. Commissioner in completion of the Local Inspection.

Ld. Commissioner is also not permitted to collect any evidence under any circumstances or to act in any manner which is beyond the Writ of Commission or not within the ambit of his work.

To (**20-03 -2024**) for filing receipt showing payment of commissioner's fee by the plaintiff, thereafter writ shall be issued.

Dictated & corrected

by me :-

Chief Judge

Chief Judge.

J.O .Code:- WB 01244.