

Title Appeal 53 of 23

Order No.12

Dt. 12 .09 .2024

Today's date is fixed for hearing the application dated 31.08.24 filed by the appellants under Order 39 Rule 7 C.P.C.

One another application comes up from the side of the appellants praying for demolishing the mud built house situated at the south western corner of the suit plot. Copy served. Let it be kept with the record.

Ld. Advocate for the appellants is present. None appears on behalf of the respondents on repeated calls. Hence, the application under Order 39 Rule 7 C.P.C. is taken up for hearing in the absence of the respondents.

Heard the Ld. Advocate for the appellants.

Fix 25.09.24 for passing order

Addl. Dist. Judge
FTC II, D/Harbour

Order No.13

Dt. 25 .09 .2024

Today's date is fixed for passing order in the application under Order 39 Rule 7 C.P.C.

At this stage the contesting respondent filed a written objection against the application filed today by the appellants. Let the written objection be kept with the record.

I am busy with other sessions matter. Hence, the order could not be passed.

The case is adjourned.

Fix 08.10.24 for passing order.

Addl. Dist. Judge
FTC II, D/Harbour

Order No.14

Dt. 08 .10 .2024

Today's date is fixed for passing order.

Due to resolution of Civil Court Bar Association no step has been taken on behalf of the appellants.

The case is adjourned.

Fix 12.11.24 for passing order.

Addl. Dist. Judge
FTC II, D/Harbour

Order No.15

Dt. 12 .11 .2024

Today's date is fixed for passing order.

Appellant file hazira through Ld. Advocates.

Record is taken up for passing order.

By filing the the petition the appellants/petitioners contended that there is a mud built premises with tile shed situated at the suit land and the said premises has almost become dilapidated and the walls of the said premises have almost collapse and that the nature of said premises is such that it cannot be repaired. It is further contended that the remaining portion of the wall of the said premises may totally collapse at any point of time and in that case apprehension of loss of life and property cannot be avoided.

Accordingly, the appellants have prayed for appointment of a local inspection commissioner with a view to bring on record the actual position of the premises standing on the suit land and to draw a rough sketch map of the same.

As a matter of fact the respondents did not contest the instant application nor did they take part in the hearing of the said application.

Be that as it may, this appeal has been directed against the judgment and decree passed by the Ld. Civil Judge (Jr. Divn.), 1st Court, Diamond Harbour in Title Suit No.73/2004 whereby Ld. Court below decreed the suit on contest followed by a declaration of right, title and interest of the plaintiffs to the extent of 3/4th share in the suit plot No.158 and 165. The plaintiffs having found themselves aggrieved and dissatisfied with the impugned judgment and decree preferred the instant appeal contending inter alia that the Ld. Court below ought to have passed a decree for recovery of possession of 4 decimal danga land in the suit property by dispossessing the defendants from there. It is thus, an admission of the plaintiffs/appellants that to some extent in the suit property the defendants have physical possession, which is why, the plaintiffs/appellants included a prayer for a decree for recovery of possession in their pleadings. Be that as it may, the purpose for which the instant application under Order 39 Rule 7 C.P.C. has been filed is as to bring on record the actual structural portion of the premises standing on the suit land in-as-much as the said premise is lying dangerously in a dilapidated condition as claimed in the instant petition and repairing of the same is not possible. Be it mentioned that the appellants have also filed one application on 12.09.24 praying for an order of demolition of the dilapidated structure on the suit property. It is therefore, clearly understood that the appellants' main focus is to get an order of demolition of the alleged dilapidated structure on the suit property which is why the proposed local inspection has been sought. The way the appellants have described the condition of the premises/ house it deserves a physical verification and as such this court finds no impediment in getting the suit property inspected by way of appointing a local inspection commissioner.

The instant petition therefore, deserves to be allowed.

Hence it is ,

O r d e r e d,

The petition under Order 39 Rule 7 C.P.C filed by the appellants is hereby allowed and accordingly disposed of.

Lt Ld. Advocate Sri/Smt. Madhuri Bar be appointed as Local Inspection Commissioner for the purpose of ascertaining the nature, condition and structural portion of the premises/house standing over the suit land and to draw a rough sketch map of the same.

Ld. Commissioner is allowed to take still photograph of the structure standing on the suit property and to submit his/her report before this court within 15 days from the date of receipt of writ.

The appellants are directed to pay a provisional cost of commission charge to the tune of Rs.3,000/- as early as possible preferably within a period of 10 days from this date.

To 22.11.24 for payment commission cost and issuing of writ.

Addl. Dist. Judge
FTC II, D/Harbour

