

T.S. No. 185 of 2019

Regd. 79/2019

(J.O. Code-WB00823)

Order no. 19 dated 06-02-2023

Today is fixed for hearing of the vacating petition dated 26.08.2022.

The said application is taken up for hearing.

Heard both sides.

Considered.

The order dated 13.02.2020 fixing the record for ex parte hearing against defendants no. 1, 4 and 5 is recalled with costs of Rs. 500/- to be paid by each of the defendants no. 1, 4 and 5.

To 15.02.2023 for hearing of the application u/o 39 r. 1 & 2.

Sd/- Sushmita Gayen
(Civil Judge, Sr. Divn., Kakdwip)

D/C

Sd/- Sushmita Gayen
(Civil Judge, Sr. Divn., Kakdwip)

T.S. No. 185 of 2019

Regd. 79/2019

(J.O. Code-WB00823)

Order no. 20 dated 15-02-2023

Today is fixed for hearing of the application under Order 39 Rule 1 and 2 of CPC dated 25.09.2019 filed by the plaintiffs.

The said application is taken up for hearing along with the objection filed thereto filed by the defendant in the presence of Ld. Advocates for both the sides.

The Ld. advocate on behalf of the plaintiffs submit that the plaintiffs and defendants are co sharers in respect of the suit property and that the defendants are trying to change the nature and character of the suit property and the plaintiffs therefore pray for an order of injunction.

The Ld advocate on behalf of the defendant raises strong objection.

Heard both sides.

Considered.

Perused the application under order 39 rule 1 and 2 CPC and other documents filed on record.

Hd. Both sides. Considered.

In my considered view none of the parties will be prejudiced if both the parties are directed to maintain an order of status quo in respect of nature, character and possession of the suit property till disposal of the suit.

Hence, it is,

ORDERED

that both the parties are directed to maintain an order of status quo in respect of nature, character and possession of the suit property till the disposal of the suit.

The application under Order 39 Rule 1 and 2 CPC is thus disposed of on contest.

Sd/- Sushmita Gayen
(Civil Judge, Sr. Divn., Kakdwip)

D/C

Sd/- Sushmita Gayen
(Civil Judge, Sr. Divn., Kakdwip)

Later:

The defendants file an application u/o 39 r. 7 of the CPC, this day.

The said application is taken up for hearing in the presence of the Ld. Advocates of both the sides.

Heard the Ld. Advocates.

Considered.

Perused the plaint and the application under Order 39 Rule 7.

In the said application under Order 39 Rule 7, the above named defendants have prayed for local inspection of this suit property so that the actual picture of the suit property comes before the court and so that the court may arrive at a just and proper decision.

In the application for local inspection, the the above named defendants have expressed their intention to bring on record the true picture of the suit property. Having considered the points of local inspection, I am of the view that it would be just and proper to hold local inspection of the property in dispute. At the same time I am of the opinion that the local inspection sort for is necessary for proper adjudication of the dispute between the parties.

Hence, the application under Order 39 Rule 7 of the CPC filed by the the defendants is allowed on contest.

Ld. Advocate **Anjuman Ara Khatun** be appointed as Commissioner in this case for holding local inspection of the suit property mentioned in the scheduled of the application for local inspection and of the plaint on the points satisfied in the application for local inspection **except for taking any measurement** and also the Ld. Advocate Commissioner is refrained from passing any opinion as to if any construction has been newly constructed or not.

Ld. Advocate Commissioner is directed to go to the locale after due service of notice upon both the parties and to hold local inspection of the property in dispute on the points mentioned in the application for local inspection and thereafter to prepare a report on the points mentioned in the application for local inspection except for the point as noted above and on any points may be shown by the parties to this suit at the time of local inspection.

To **15.03.2023** for submission of Commission report. In case the Ld. Advocate commissioner fails to submit the report he/she will be required to pay back the commission amount.

The defendants are directed to pay Rs. 2,000/- to the Commissioner as cost of local inspection at an earliest.

D/C

Sd/- Sushmita Gayen
ACJM-cum-CJSD, Kakdwip

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