

Title Suit - 472/2022 (R)
Present : A. Roy Chowdhury
J.O. Code WB01182

Order No. 23, dtd. 03.08.2024 :-

Today is fixed for passing order in respect of a petition under Section 151 CPC, dt. 08.02.2024 filed by the defendant no. 1, seeking police assistance in implementing the order of injunction granted by this Court vide order dt. 31.07.2023 and another petition dt. 17.05.2024 filed by the plaintiff u/o 39 rule 7 CPC seeking an order of local inspection.

The defendant no. 1 by filing the petition dt. 08.02.2024 supported by sworn affidavit, seeks police assistance in implementation of the order of injunction dt. 31.07.2023 passed by this Court thereby directing the plaintiff and the defendant no. 1 to maintain status quo till disposal of the suit. The Ld. Advocate for the defendant no. 1 contends that the plaintiff is trying to change the nature and character of the suit property by initiating construction and therefore the order of injunction needs to be strictly implemented by intervention of this Court through police assistance.

The plaintiff has contested the instant application by filing W.O. The Ld. Advocate for the plaintiff has specifically denied any act of contravention as alleged by his adversary. While taking this court through the previous ordersheets, it has been pointed out by the Ld. Defence Counsel that his client has invoked the provision laid down under Order 39, Rule 2A CPC (being registered as Misc. Violation case no. 18/2024) in order to prosecute the defendants for violating a subsisting order of injunction. The plaintiff produces copies of building plan, enquiry report, letter addressed to the Pradhan and other relevant documents to support his contention during the course of hearing.

Having considered the contentious claims of the parties, it appears that the defendant no. 1 intends to be provided with police assistance for proper implementation of the order of injunction granted by this Court on 31.07.2023. However, no convincing document has been produced by the defendant no. 1 as a prima-facie proof of such violation. On the other hand, it appears that a specific proceedings under Order 39, Rule 2A CPC has already been initiated by the present plaintiff against the defendants for ascertaining the nature and extent of violation of the order of status-quo. Since a specific remedy is available to the parties under Order 39, Rule 2A CPC for determining any issue of violation and in due consideration of the fact that such proceedings is yet to be decided by this Court on proper appreciation of evidence, it would be undesirable to pass any direction upon the police authorities at this stage.

Resultantly, this Court does not find any merit in the instant application dt. 08.02.2024 filed by the defendant no. 1 and the same stands rejected on contest.

The record is now taken up for passing order in respect of a petition filed by the plaintiff dt. 17.05.2024 under Order 39, Rule 7 CPC, seeking an order of local inspection of the suit property.

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The Ld. Advocate for the plaintiff submits that his prayer for local inspection needs to be allowed for proper ascertainment of the facts in issue and that will assist this Court in arriving at a proper decision.

The Ld. Advocate for the defendant no. 1 has opposed the instant application terming it to be misconceived and devoid of merits.

Having considered the submission made by the Ld. Counsel appearing for their respective parties, it is felt that the instant application needs to be allowed for bringing out a clear picture which would enable this Court to arrive at a just decision of this case.

Based on the observations made herein above, the instant petition filed by the plaintiff under Order 39, Rule 7 CPC stands allowed on contest without any order as to costs.

Ld. Advocate _____ is hereby appointed as the Advocate Commissioner for the purpose of inspection of the suit property.

Ld. Advocate Commissioner is hereby directed to visit the suit locality for commission work only after service of notice on the plaintiff as well as defendants either individually or through their respective ld. Advocate.

He/she is further instructed to confine his report to the points mentioned in the subject application dtd. 17.05.2024.

The plaintiff is directed to pay an amount of Rs. 5,000/- to the Ld. Advocate Commissioner towards his/her fees.

Writ will be issued only after furnishing of documents to show the payment of fees by the plaintiff.

To _____ for submission of Commissioner's Report.

Dictated & Corrected by me

**Sd/- A. Roy Chowdhury
Civil Judge (Sr. Divn.), 1st Court,
Krishnanagar, Nadia**

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