

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 176 of 2017**

Jogiram Agrawal (Bondiya), aged about 71 years, S/o Late Laxmichand Agrawal, Occupation-business, R/o Gandhi Ganj, Raigarh, Police Station Sadar, Tahsil, Civil and Revenue District Raigarh (CG)

---- Petitioner

Versus

Vijay Rateriya, aged about 69 years, S/o Late Ramgopal Rateriya, R/o Gandhi Ganj, Raigarh, Police Station-Sadar, Tahsil, Civil & Revenue District Raigarh (CG)

---- Respondent

For Petitioner	:	Mr.Ratnesh Kumar Agrawal, Advocate
For Respondent	:	Mrs.Hamida Siddique, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/05/2017

1. The petitioner/plaintiff filed an application under Order 39 Rule 7 of the CPC for ascertaining the condition of the suit premises, which has been rejected by the trial Court, against which, this writ petition under Article 227 of the Constitution of India has been filed.
2. Mr.Ratnesh Kumar Agrawal, learned counsel appearing for the petitioner, would submit that the petitioner is landlord and the respondent is tenant. In the suit house, substantial alteration and addition has been made after letting it out to the respondent, therefore, to ascertain the condition of suit premises, commission be appointed under Order 39 Rule 7 of the CPC.
3. Mrs.Hamida Siddique, learned counsel appearing for the respondent, would oppose submission and writ petition.

4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
5. It is true that the petitioner/plaintiff is landlord and the respondent/defendant is his tenant and suit for eviction, arrears of rent and permanent injunction is pending consideration before the trial Court, in which the petitioner filed an application under Order 39 Rule 7(1) of the CPC that during pendency of the suit the respondent/defendant has made substantial construction in the suit house by which there is change in utility of the suit house and therefore, ascertaining the condition of the suit house, commission be appointed, which has been rejected by the trial Court holding that the suit is pending since 19.8.2011.
6. At this stage, it would be appropriate to notice Order 39 Rule 7 (1) of the CPC which states as under:-

“7. Detention, preservation, inspection, etc., of subject-matter of suit.-(1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit.-

(a) make an order for the 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 authorise 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 authorise 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.”

7. Rule 7 (1) of the CPC provides that the Court may make an

order for inspection of any property which is the subject matter of such suit or as to which any question may arise therein. Rule 8(1) further provides that application made by the plaintiff for an order under Rule 8 may be made at any time after the institution of the suit and the Court is authorised to issue a commission for inspection at any stage of the suit and even after the plaint is filed. Provision for inspection in Rule 7 has been enacted mostly for the purpose of keeping on record the existing condition of the property so that if the same is subjected later on to any change, deterioration or mischief by any of the parties or by any other agency or reason, that can be known by the Court if and when required.

8. The petitioner has raised the issue with regard to the condition of structure of suit house. When the condition of the structures is at issue, a commission for local investigation cannot be issued under Order 26 Rule 9 of the CPC and the proper procedure is to apply the provisions of Order 39 Rule 7 of the CPC and such appointment for ascertaining the condition of the concerned premises or any part thereof by making local inspection comes within Order 39 Rule 7 and not under Order 26 Rule 9 of the CPC (See **Ammulya Vs. Annanda**¹, **Nitendra Nath Vs. Subhas**² and **Allahabad Bank Vs. Sourendra Nath Shaw**³.)
9. The Supreme Court in the matter of Smt. Rajbir Kaur and

1 AIR 1933 Cal 475

2 AIR 1981 Cal 319

3 AIR 1977 Cal 80

another Vs. M/s. S. Chokesiri and Co.⁴ while considering Order

39 Rule 7 of the CPC has held as under:-

“54. But it is possible to construe the power to appoint a Commissioner to inspect the extant state and nature of structures as not confined to Rule 9 of Order 26 but referable to Rule 7 of Order 39 CPC where the court can dispense with prior notice, should it appear to the court that the very object of making of appointment of a Commissioner would be defeated and frustrated by the issue of prior notice.....”

10. Applying the afore-stated provision and principle of law flowing from the above-stated judgment, it is quite apparent that the petitioner's application for ascertaining the condition of the suit house ought to have been allowed by the trial Court and its rejection is unsustainable as the inspection of suit house for ascertaining the condition of suit house is absolutely necessary.
11. Accordingly, the impugned order is set aside. The trial Court is directed to issue a commission to Revenue Officer or Advocate as it thinks fit for making inspection under Order 39 Rule 7(1) (a) of the CPC. The writ petition is allowed to the extent indicated hereinabove. The trial Court is directed to expedite the trial and conclude it expeditiously, preferably within 4 months from the date of production/receipt of copy of this order as civil suit is pending since 19.8.2011 and there is no substantial progress in the trial of suit. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-