

ORDER BELOW EXH.06 IN H.R.P.SUIT NO.151/2019

Coram : Ms.S.V.Pathan, Judge.

1. The brief facts of the interim injunction application are that the plaintiff is the owner of rent premises mentioned in para 1 of the application. The rent premises was let out to defendant no.1 on 06.07.1979 for monthly rent of Rs.24.25. The defendant no.1 has not paid the rent amount since 31.03.1999. The amount of Rs.6,305/- is due from the defendant no.1 for the period from 01.04.1997 to 30.11.2018. Thus, defendant no.1 is the tenant in arrears. Demand notice has been sent to him on 31.12.2018, but the notice is returned with the endorsement that defendant no.1 has left the rent premises. It has come to knowledge of the plaintiff that defendant no.1 has sublet the rent premises to defendant no.2 and the rent premises is in illegal possession of defendant no.2. The rent premises is bona fide required by the plaintiff. The defendants have also threatened the plaintiff. Hence, the present suit and application have been filed.

The plaintiff has prayed to grant temporary injunction against the defendants and their persons by restraining them from transferring the rent premises in any manner to any person from creating third person's interest in the rent premises.

2. The suit has been dismissed against defendant no.1 under Order 9, Rule 5 of CPC.
3. The defendant No.2 has filed his written statement at Exh.23 wherein he has contended that the plaintiff is not the owner of the rent premises. There is no relation between the parties as landlord and tenant. The defendant no.2 is the owner of rent

premises and share certificate has been issued in favour of defendant no.2. Defendant no.2 is occupying the rent premises in capacity of owner. Defendant no.1 has never occupied the rent premises as a tenant. The plaintiff has not produced any documentary evidence showing his ownership of the rent premises. The suit of the plaintiff is not tenable. Hence, the application should be rejected.

4. I have read the documentary evidence vide mark 4/1 to 4/4 produced by the plaintiff and mark 25/1 produced by defendant.
5. I have heard the learned advocate Mr.B.H.Bhavsar, appearing on behalf of the defendant no.2. No one has remained present on behalf of the plaintiff for the arguments.
6. In the present application, the plaintiff has stated that defendant no.1 is his tenant and defendant no.2 is the sub-tenant. The defendant no.2 has clearly denied the ownership of the plaintiff in rent premises. The defendant has also clearly denied the relation between plaintiff and defendant no.1 as landlord and tenant. Therefore, it is duty of the plaintiff to prove prima facie his ownership over the rent premises and also to prove relation between the parties as landlord and tenant, when the defendant has specifically raised contentions in this regard. On perusing the documentary evidence produced by the plaintiff, it appears that the plaintiff has not produced any single evidence such as rent agreement or rent receipt to prove the tenancy. Thus, relation between the parties as landlord and tenant is not proved prima facie.
7. Furthermore, the plaintiff has also not produced title-deed to prove his ownership over the rent premises. The defendant no.2

has produced copy of share certificate vide mark 25/1. As per say of defendant no.2, this share certificate shows ownership of rent premises. The share certificate vide mark 25/1 is not properly legible document. The name of defendant no.2 can be read on share certificate, but other details of rent premises are not possible to read. However, it is also required to be considered that the plaintiff, by filing a rejoinder, has not denied the facts stated by defendant no.2 in written statement with regard to this share certificate. Therefore, at this stage, share certificate can be relied upon.

8. The plaintiff has produced demand notice and other documents showing the service of notice at mark 4/1 to 4/4, but these documents would not help the plaintiff when the plaintiff has not produced any evidence of tenancy.
9. On considering the above facts, the plaintiff has not proved his prima-facie case. When the plaintiff fails to prove prima-facie case, it is not required to discuss criteria of balance of convenience and irreparable loss. Hence I pass the following final order.

ORDER

1. The present interim injunction application vide Exh.06 is hereby rejected.
2. The costs shall follow the result of the suit.

Pronounced and signed in the open court today on this 30th Day of December, 2019.

Date : 30.12.2019
Place : Ahmedabad

(Ms.Shamabanu Vazialikhan Pathan)
Chamber Judge, Code No.GJ00873
Small Causes Court,
Ahmedabad.