

ORDER BELOW EXH.6 IN P.S.R.P.No.22 OF 2019

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

1. The brief facts of the interim injunction application are that the applicant is the owner of one disputed premises mentioned in para no.1 of the application. The ground floor of the disputed premises is consisting one room and kitchen and it was given to the deceased father of opponent on compassionate ground only to use it. The applicant has revoked that permission. The applicant is residing in the rented property and disputed premises is required for him. But the opponent is not handed over the possession of the disputed premises inspite of frequent demands and notice. Furthermore, the opponent has entered into property of first floor i.e. into the premises situated on the disputed premises illegally and has demolished bathroom and platform. Thus, he has caused harm to the premises of the applicant. He has also given threat to the applicant and has used abuse language. Therefore, the present application has been filed.

The applicant has prayed to grant temporary injunction against the opponent by restraining him from making any kind of construction, repairing work or alteration in the disputed premises and from transferring the disputed premises to any person in any manner.

2. The opponent has appeared before the Court after service of summons and has filed written statement at Exh.19 wherein he has contended that the opponent is residing in the disputed premises in capacity of the tenant. The applicant is not the owner of the disputed premises. The opponent has not entered into premises

situated on first floor and has not made any kind of destruction. The construction of first floor is in dilapidated condition and therefore it is broken. The applicant is not residing in the rented premises, but he is residing in his own house situated Jamalpur, Ahmedabad. The opponent has been occupying the disputed premises since the time of his grant father Alabakshji Karimji. The opponent is also paying the rent amount to the applicant, but he is not issuing receipt. Hence, the application should be rejected.

3. I have perused the documentary evidence vide mark 4/1 to 4/3 produced by the applicant and vide mark 21/1 to 21/14 produced by the opponent. I have also perused the rejoinder filed by the applicant at Exh.23.
4. I have heard the arguments of learned advocate Mr.S.S.Saiyad appearing on behalf of the applicant and learned advocate Mr.I.S.Shaikh appearing on behalf of the opponent. Both the advocates have argued as per the pleadings.
5. In the present applicant the applicant has stated that he is the owner of the disputed premises. The opponent has denied this fact in his written statement. Therefore, it is duty of the applicant to show prima facie to this Court that he is the owner of the disputed premises. If we peruse the documentary evidence produced by the applicant, it appears that he has produced notice issued by him at mark 4/1 and its acknowledgement receipt at mark 4/2. He has produced complaint sent to the police commissioner and window slips at mark 4/3 to 4/5. The status reports of notice have been produced at mark 4/6 and 4/7. Photographs of disputed premises and its bill have been produced from mark 4/9 to 4/14. Thus, it appears from all these documentary evidence that there is no

evidence showing ownership of applicant in respect of the disputed premises.

6. The opponent has contended that he is the tenant in the disputed premises since the time of his grand father and he is occupying the disputed premises in capacity of tenant. The opponent has produced documentary evidence vide mark 21/1 to 21/4 in support of his pleading.

On perusing rent receipts vide mark 21/1 to 21/3, it appears that name of Alabakshji Karimji has been mentioned as tenant. On perusing rent receipt vide mark 21/5, it appears that name of Hajibhai Paliwala has been mentioned as tenant. It appears from the title clause of the application that name of father of opponent is "Hajibhai Paliwala". On perusing birth certificate of opponent vide mark 21/10, it appears that the opponent's father name is Haji Mohammed Alabaksh. Therefore, on combined reading of mark 21/1 to 21/3, 21/5 and 21/10 it appears that the present opponent's grand father and father was the tenant in the rent premises.

On perusing mark 21/11, it appears that opponent's father has died on 26-02-2015. On perusing light bill and tax bill vide mark 21/12 and 21/13, it appears that name of opponent's grand father is still in the record as an occupier. On perusing notice of AMC vide mark 21/14, it appears that present opponent is the occupier of the disputed premises. It appears from mark 21/14 that this notice has been issued in the year 2019 and the name of owner of disputed premises is mentioned as Soheb Akbarbhai. The name of applicant does not reflected as owner in the record of AMC.

7. On considering the above facts, the applicant has not proved himself as owner of the disputed premises. The opponent has proved prima facie that he is having tenancy right in the disputed premises. Thus, the applicant has not proved the prima facie case. It is not required to discuss criteria of irreparable loss or balance of convenience, when the applicant has not proved his prima facie case. In view of above discussion, I pass the following order.

ORDER

1. An interim injunction application vide Exh.6 is hereby rejected.
2. Costs shall follow the result of the application.

Pronounced and signed in the open court on this 24th day of October, 2019.

Date : 24-10-2019
Place : Ahmedabad

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