

Title Suit 500 of 2016

Present: Sri Subhash Kumar Kar, Judge, Bench-V (WB00592)

Order No. 51 / Dated 05.10.2024

Record is put up for order on the petition under Order XL Rule 1 of C.P.C.

It appears from the record that both sides were heard on the petition on 09.08.2024 and today it is fixed for order.

The plaintiff has filed this petition on the ground that though the plaintiff is in possession of one flat in fourth floor of the suit premises being the co-sharer, the defendants are not paying her share of rent despite collecting rent from 25 tenants living in the suit property and it is prayed to appoint a Receiver in respect of the suit property for proper distribution of share of rent collected from the suit property and for any other order and/or direction. For this purpose the plaintiff has annexed list of tenants and rate of rent per month in the schedule of the petition.

On the other hand, defendants filed written objection against the said petition denying all the allegations made therein and inter-alia stated that Md. Nazir, the deceased husband of the defendant no. 2 and deceased father of the

plaintiff and defendant nos. 1, 3 and 4 out of his love and affection transferred the suit property in favour of defendant nos. 1 and 2 by Oral Hiba during his lifetime and he made a declaration to that effect by executing one document on 21.12.2002 and it is prayed to reject the petition.

At the time of hearing Ld. Advocate appearing for the plaintiff submitted that the plaintiff is in possession of the suit property being a co-sharer and she is entitled to the share of rent collected from the suit property and since the defendants are not distributing her share, it is require to appoint a Receiver to account for collection of rent and for distribution of the same and it is prayed to allow the petition.

Ld. Advocate appearing for the defendants submitted that the share of the plaintiff in the suit property is not admitted by the defendants and therefore the instant petition has no merit.

On perusal of the materials placed on record it appears that admittedly plaintiff is in possession of one flat in the fourth floor of the suit property but her share is not admitted by the defendants and they have taken plea that Md. Nazir the predecessor in interest of the plaintiff and defendants transferred the suit property to the defendant nos. 1 and 2 during his lifetime by a Oral Hiba and the said facts cannot be adjudicated unless the suit goes on trial and therefore at this point the entitlement of the plaintiff cannot be decided conclusively.

Thus, in the line of the above observations, the prayer of the plaintiff cannot be allowed at this stage.

Hence, it is

ORDERED

that the instant petition under Order XL Rule 1 of C.P.C stands rejected on contest but without any order as to cost.

Fix 18.02.2025 for framing of issues.

D/c by me,

Judge.

Judge, Bench-V,
City Civil Court, Calcutta.