

Title Suit no. 1509 Of 2021

Present: Jayashree Banerjee, Judge, Bench-II(WB01049)

Order No. 13/ Date:15.06.2022

Heard the Ld. Counsels for the contesting parties. It is submitted by the Ld. Counsel for the plaintiff that the defendant by accepting an amount of Rs.48,000/- as occupation charges for the period of 12 months from September, 2021 to August, 2022 have acknowledged the legality of the plaintiff's occupation in respect of the suit premises and therefore cannot turn back and say that the plaintiff was given the right to establish his out office only for the purpose of developing the property of the defendant. In support of his such contention Ld. Counsel relied upon two annexures being annexure 'B' and 'C' to the injunction petition.

Ld. Counsel for the defendant submitted that the two documents that have been relied upon by the plaintiff are not executed by his client and the signature of his client in those two documents are forged by the plaintiff and that very soon his client shall be taking out appropriate application before this court against the plaintiff for forging the signature of his client and using them before the court of law. He further submitted that the defendant never intended to give the plaintiff any right in respect of the property which is evident from the registered Power of Attorney granted in favour of the plaintiff by the defendant executed on 3rd September, 2021. At page 5 of the said registered Power of Attorney it is mentioned as follows: "Be it noted that this Power of Attorney is being granted in favour of the said attorney without any consideration and no interest or right of the attorney is created on the properties which are the subject matter of this Power of Attorney and that further the said attorney shall not hereby obtain or have power to make any construction or development work or apply for sanctioning plan or enter into any development agreement with anyone in respect of the said properties. This Power of Attorney is revocable in nature at my will without serving any notice to the attorney".

Ld. Counsel thereafter submitted the documents relied upon by the plaintiff cannot create any right in favour of the plaintiff overriding the contents of a registered document. Moreover, annexure 'B' which in effect is a Development Agreement cannot even be looked into by the court as the same is not a registered development agreement when after 1991 Development Agreement has been made compulsorily registrable, the

contents of such unregistered document cannot have any overriding effect over the registered General Power of Attorney executed in favour of the plaintiff by the defendant. Ld. Counsel further submitted that the plaintiff at best could have claimed compensation from the defendant for having incurred the alleged expenses but there is no claim or prayer made to that effect and therefore is barred from filing any separate claim under Order 2 Rule 2 of the Code of Civil Procedure.

Having heard the Ld. Counsels and considering the materials on record I am of the opinion that the plaintiff miserably failed to establish before the court that the plaintiff is in possession of the suit premises and court should protect his such possessory right in respect of the suit premises by passing an order of temporary injunction pending disposal of the instant suit.

Hence, it is,

Ordered

That the temporary injunction petition is heard and disallowed on contest.

Dictated & corrected by me:

Judge, Bench-II

Judge, Bench-II
City Civil Court, Calcutta