

T.S. No. - 1889 of 2022(CNR WBCC01-009208-2022)
Present : Jayashree Banerjee, Judge, Bench-II (J.O. Code No.WB01049)

Order No. : 02
Dated : 03.09.2022

Record is put up today on the basis of the petition filed by the plaintiff.

Plaintiff has filed and moved an application under Order 39 Rule 1 & 2 read with section 151 of CPC , 1908 with prayer for ad-interim order of injunction in terms of the prayer contained in the said application.

It is reported that no caveat has been filed as yet.

The plaintiff's case, in brief, is that the property in question being all that piece and parcel of bastu land measuring about an area of 7 Cottahs 6 Chittacks and 25 sq.ft. be the same a little more or less lying and situated at 124A, Raja Dinandra Street, P.S. Burtolla, Kolkata – 700004 which is morefully and particularly laid down and described in the schedule herein under given was owned by the landlord being the Estate Sri Gokul Chandra Jew namely, "Durga Dham" the then resident of 85/13 B.M. Mitra Lane, Calcutta-700004 and the sebaits of the said Estate Sri Gokul Chandra Jew was one Sree Purna Chandra Dey and one Prabir Kumar Dey and the estate were maintained by them for and on behalf of Gokul Chandra Jew.

The plaintiff stated that one Birendra Chandra Bose was a thika tenant of the suit schedule mentioned property herein. It is pertinent to mention here that Birendra Chandra Bose, since deceased, used to live at the South-West portion of the premises in a room covered with tin shed and the rest of the portion was tenanted. The portion given by Birendra Chandra Bose was the entire tenanted portion was with respect to the entire premises being 124A and 124B, Raja Dinandra Street. The premises in question is 124A, Raja Dinandra Street which is tenanted by the plaintiff's father and presently the plaintiff.

The plaintiff further stated that Birendra Chandra Bose expired on 24th May, 1971 leaving behind him, his surviving widow Smt. Kamala Bose, his married daughter Smt. Uma Mitra (wife of Sailesh Kumar Mitra) and their only son Bagala Charan Bose who was a person of unsound mind.

The plaintiff next stated that in the year 1972, Smt. Kamala Bose, since deceased, let out the said instant plot of land to Kalyan Kumar Sengupta, since deceased, who was the father of the

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plaintiff herein. Admittedly, Kamala Bose entrusted Kalyan Kumar Sengupta, since deceased, to look after her only son after her death as her son Bagala Charan Bose was not in his natural senses and was a lunatic. Admittedly, Kalyan Kumar Sengupta, since deceased, was the 'Bharatiya' under the then 'thika tenant'.

The plaintiff stated that at the time when the said monthly tenancy was initiated and accepted in the year 1972, the said plot was open and after taking the said tenancy, Kalyan Kumar Sengupta, since deceased, constructed a factory complete with structures. He built a brick built pucca structure with 2 rooms in the first floor and subsequently built a 3 storied iron structure with steel plated floor for his chemical factory. The structure/building was initiated by Kalyan Kumar Sengupta since the year 1973 and the same was completed in the year 1980 and admittedly, a total amount of Rs.6 to Rs.7 lakhs was spent thereon. The total area of occupation was more or less 9800 sq.ft. It is pertinent to mention here that Kalyan Kumar Sengupta was the owner of an organization in the name and style of "Esskay Organisation". It is further stated that from the 1st day of March , 1972 since the inception of the tenancy Kalyan Kumar Sengupta, since deceased kept on regularly paying the monthly rent which was initially an amount of Rs.500/- and thereafter, Rs.650/- for the said structure erected by him as the Bharatiya to the said thika tenant . Receipts were granted to Kalyan Kumar Sengupta , since deceased, for the rents paid. The plaintiff stated that her father expired intestate on 07.09.2021 with herself as the only legal heir to the same.

The plaintiff also stated that after expiry of Kamala Bose, the married daughter of Birendra Chandra Bose and Kamala Bose (namely Uma Mitra nee Bose) took over the charge of Bagala Charan Bose and kept him under her personal supervision. Bagala Charan Bose was at that point of time taken to her place at Paikpara.

The plaintiff next stated that after few years Smt. Uma Mitra nee Bose expired leaving behind her brother Bagala Charan Bose and her husband Sailesh Kumar Mitra , since deceased to take necessary legal steps to enable him to collect the rent, issues and profits from the tenants

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(including both the father of the petitioner and other tenants) in the name of Bagala Charan Bose from the tenants of the premises No.124A and 124B of Raja Dinandra Street.

The plaintiff stated that an application being case No.LM/1/1979 was preferred before the Hon'ble High Court, Calcutta which was adjudicated on 12.01.1983 by his Lordship and as per the direction of the Hon'ble High Court, Calcutta, Bagala Charan Bose was declared a lunatic. By way of the said solemn order of the Hon'ble High Court, Bagala Charan Bose was declared a lunatic and the said Sailesh Kumar Mitra was appointed the manager of the person while Sri Nanda Kishore Das was appointed as the special officer cum receiver and also of the estate of the said lunatic Bagala Charan Bose which is the schedule mentioned property at premises no.124A and 124B, Raja Dinandra Street, Kolkata – 700004. Subsequently, since the appointment, Sailesh Kumar Mitra at the instance of Kalyan Kumar Sengupta had kept Bagala Charan Bose in unmade Ashram at Khardah.

The plaintiff further stated that in this way Kalyan Kumar Sengupta became the tenant of the lunatic Bagala Charan Bose through/under the guardianship of Sailesh Kumar Mitra and had been paying rent for his tenancy in the suit premises which is morefully and particularly laid down and mentioned in the schedule herein and his tenancy had been since 1972 from the main and principal thika tenant Birendra Chandra Bose.

The plaintiff next stated that since the death of Uma Mitra, her husband Sailesh Kumar Mitra stopped the payment of the rent to the shebait of the said Estate Sri Gokul Chandra Jew (who was the original owner) and he also stopped the payment of the rents and taxes to the corporation of Calcutta. As such finding no other option, a lunacy matter no. 1 of 1979 filed before the Hon'ble High Court, Calcutta, and during the pendency of the said application a Special Officer cum Receiver was appointed.

The plaintiff stated that the Special officer cum Receiver N.K. Das who was appointed in his meeting at the factory premises of Kalyan Kumar Sengupta, on 16th January 1983, it was admitted that Kalyan Kumar Sengupta had been paying rent regularly and it was also admitted that Kalyan Kumar Sengupta had been paying the municipal taxes and rents and other

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government taxes on behalf of Bagala Charan Bose which even at that time was for an amount of Rs.2000/- . It was further decided and admitted in the meeting that the area of tenancy at premises no.124A , Kalyan Kumar Sengupta had built up structures and buildings on the said land including tin roof and he was also permitted by Sailesh Kumar Mitra to stay thereon for his life. Accordingly, it was directed that the rent would be paid by Kalyan Kumar Sengupta to the Ld. Special Officer cum Receiver Sri. Nanda Kumar Bose and Kalyan Kumar Sengupta had been doing the same since then.

The plaintiff stated that the said Lunacy Matter no.1 of 1979 was adjudicated by his Lordship the Hon'ble Justice Pratibha Banerjee on 15th July, 1983 wherein the amount to be paid was also subsequently decided at Rs.5850/- and which Kalyan Kumar Sengupta had been paying. The rent was paid continuously till June, 2006 but was discontinued due to the death of the Special Officer.

The plaintiff further stated that the plaintiff while her father Kalyan Kumar Sengupta was alive , she was using and occupying the said premises morefully and particularly mentioned in the schedule herein and even after the expiry of her father, she was enjoying the tenancy and had been running the family business/ the business of her father while all of a sudden when was approached by one unknown person who asked her to vacate the premises stating that the said premises has been dealt with and the plaintiff did not have any further right over the said property. She was further told that the said property will be demolished soon for development purpose and she had to leave the property immediately. She further stated that a joint venture agreement was also executed by the defendants and very soon the said property shall be demolished. The plaintiff immediately made a formal application for protection before the Officer-in-charge, Cossipore Regional Thika Tenancy Officer (being the defendant no.2) by her application dated 18th November, 2021 but it did not turn fruitful.

The plaintiff next stated that the plaintiff grew extremely conscious and aware of the situation and made a random check and search in the registration offices about the same and she was shocked to see that the defendants who were totally and absolutely unknown to the property

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had themselves executed a joint venture agreement on the 14th March, 2022 where in the defendant nos.3, 4, 5, 6, 7 and 8 executed a joint venture agreement with the defendant no.8 (through defendant no.9). The said agreement was exactly in connection to the schedule mentioned property being 124A, Raja Dinendra Street, Kolkata – 700004 and plaintiff also shocked and disturbed to note that the said deed had an entirely different set of versions which were far from reality and was completely false statements and above all the derivation of the defendants were arbitrary and the said premises was not even stated to be the premises of the Estate of Sri Gokul Chandra Jew ever. The entire deed was merely drafted based on some mis-statements and none of the parties thereon were ever the legal heirs of the actual landlord ever. The said joint venture agreement executed on 14.03.2022 was duly registered before the Additional Registrar of Assurances in the year 2022.

The plaintiff stated that on about 25.06.2022 some local hooligans approached the plaintiff and threatened in very harsh words that if the plaintiff and his family did not vacate the said tenanted portion immediately, they shall be forcibly evicted with the aid of antisocial elements and the defendants shall take over the possession of the property.

The plaintiff further stated that the defendants and their family members are continuously disturbing the plaintiff and his family in various ways and moreover, the defendants and their family members are doing such unlawful acts so that the plaintiff is compelled to vacate the said tenanted portion. All efforts of the plaintiff for peaceful mutual arbitration in presence of neighbours and local people were in vain and no other alternative plaintiff filed this instant suit.

Having heard the Ld. Counsel for the plaintiff and perusing the pleadings as narrated in the injunction petition as well as the documents annexed thereto, this Court is satisfied that the plaintiff has been able to make out a case for grant of ad-interim injunction pending hearing of the injunction petition. This Court is also satisfied that the plaintiff has also been able to make out a case as regard her right and interest over the suit property which is endangered by the defendants and the same requires to be protected by an ad-interim order of temporary injunction

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without which the plaintiff's right and interest over the suit property will be seriously jeopardized.

Hence,

Ordered

In view of the circumstances stated hereinabove Court is inclined to grant an ad-interim order of injunction restraining the defendants and their family members and their men, agents and associates from disturbing the possession of the plaintiff and/or from forcibly evicting the plaintiff in respect of the said suit property/tenanted portion without due process of law and also restrained the defendants and their family members, their men, agents and associates from carrying on any kind of Construction and/or reconstruction and/or any kind of development work or promoting work thereby disturbing the possession of the plaintiff in respect of the said suit property/tenanted portion, morefully described in the schedule herein for a period of 3 weeks from hence.

Plaintiff is directed to comply with the requirement of Order 39 Rule 3 (a) & (b) of CPC.

Defendants are to showcause as to why the ad-interim order so passed today (03.09.2022) shall not be made absolute till the disposal of the suit on 19.09.2022 when the matter shall appear for further orders.

Requisites at once.

To 19.09.2022 for S/R and A/D and further orders.

D/c by me

Judge, Bench-II
City Civil Court, Calcutta

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