

Order dated : 17/05/2024

Record is fixed for hearing of temporary injunction application.

Both the contesting sides file their respective hazira.

Ld. Advocate for the plaintiff files one extension application of ad-interim injunction.

Record is taken up for hearing of the temporary injunction application.

Heard submission of both sides in full.

Now, the record is taken up for passing order.

Plaintiff has filed this suit for declaration and injunction. Factual matrix of plaintiff's case in brief is that plaintiff claims herself to be the bona fide tenant of the suit property. As per the averments of the plaintiff, plaintiff's husband was in acquaintance of the defendant no 2 and out of cordial relation the suit property was let out to the plaintiff's husband. The tenancy agreement was entered into in the year 2009 for the monthly rent of Rs. 2500/- per month. Due to restrain relationship of plaintiff with her husband, eventually decree of divorce was granted. Plaintiff due to dearth of any place of accommodation for herself started living in the suit property alone. Further plaintiff claims that defendant no 1 use to collect rent from the plaintiff but she never issued any rent receipt in her favour. As per the averments of plaintiff, defendant no. 2 on 08/04/2022 asked plaintiff to vacant the suit property immediately. Further on 28/04/2022 defendant no 2 came to the suit property with some unknown men and asked plaintiff to vacate the suit property, upon her refusal they threatened her with dire consequences. In the meantime defendants also refuse to take any rent from the plaintiff. Plaintiff initiated a proceeding under section 144(2) of Cr.P.C against the defendant and even lodged GDE against the defendants. By filing this application plaintiff prays before this Court not to dispossess her without due course of law and not to disturb her peaceful possession of the suit property.

Plaintiff in support of her claims filed a copy of tenancy agreement, the application under Section 144(2) of CrPC along with a copy of order sheet, gas cylinder receipt and passbook receipt for the perusal of the Court.

Defendants file their written objection and denied all the allegations of the plaintiff. Further it has been claimed by the defendants that there is no cause of action in bringing this suit and there is no prima facie case for allowing this temporary injunction prayer. Defendants submit that defendants did not knew plaintiff's husband and there was a lawful agreement of tenancy between the

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plaintiff's husband and defendants. Further defendants submit that defendants came to know about the divorce from the summon which they received from the Court. Plaintiff had lied to them about her marital status. Moreover, plaintiff is using the suit property for the commercial purpose and not the purpose for which it was let out. Thus, as per the averments of defendants plaintiff has changed the nature and purpose of the suit property. Defendants further claims that they are aged and old persons and plaintiff has threaten them with evil power if they try to evict her from the suit property. Defendants further states that plaintiff has only brought this suit to harass them and this application should be rejected with cost.

Defendants in support of their case filed following documents being, rent agreement, an electricity bill of the suit property and another electricity bill of the plaintiff own house, a property tax receipt in the name of Sabita Mukerjee plaintiff herein and an advertisement of Sabita Ma.

Perused the application, documents produced and submission of the Ld. advocates of both sides.

Order XXXIX rules 1 and 2 enunciated principle of temporary injunction. As per the provision, the court can grant temporary injunction when: (i) any property in dispute is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of decree; (ii) defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors; (iii) defendant threatens to dispossess the plaintiff or otherwise causes injury to the plaintiff in relation to any property in dispute in the suit. Apart from the above-mentioned three criteria, (a) prima facie case has to be taken into consideration; (b) balance of convenience and inconvenience is to be taken into consideration and lastly (c) irreparable loss of the party is to be considered. Apart from that the conduct of the parties also forms an important criteria for the grant of the temporary injunction.

In the instant case, plaintiff has vehemently argued that plaintiff is a helpless lady and she has no place to live. Record reveals that Plaintiff's husband entered into a tenancy agreement for 2 years and which terminated in

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the year 2011, yet plaintiff is in possession of the suit property. The documents produced by plaintiff even though back dated shows that plaintiff is in possession of the suit property. The documents produced by the defendants exhibits a new story wherein, plaintiff has a separate house and she is presently using the suit property for commercial purposes. This Court should not lost its sight that this is a suit for injunction. A suit for injunction is an equitable remedy and if the plaintiff has acted in an unfair or an inequitable manner, plaintiff would not be entitled to the injunction. It is trite to mention that fraud, vitiate every noble act. The application of the plaintiff has been tinted with fraud and plaintiff has fraudulent obtained the ad interim injunction dated 16/02/2023. From the documents produced by the defendant, it can be seen that plaintiff is in possession of another property and from the copy of the advertisement filed by the defendant it can be seen that plaintiff is using the suit property for commercial purpose. Moreover, the tenancy agreement expired in the year 2011. Thus, plaintiff has failed to prove prima facie right, title or interest in the suit property. Hence, plaintiff has failed to prove any prima facie case in her favour. The balance of convenience and inconvenience are presently titling towards the defendants and as such no irreparable loss shall be caused to the plaintiff if this injunction is not allowed in favour of the plaintiff. Thus, the application dated 16/02/2023 filed by the plaintiff is refused at this stage.

Hence, it is

Ordered

That the temporary injunction has filed by the plaintiff dated 16/02/2023 is heard, considered and is hereby refused on contest.

The applications filed by the plaintiff under order XXXIX Rule 1 and 2 of Code of Civil Procedure dated 16/02/2023 is hereby heard and disposed off.

Fix **02/08/2024** for issues.

Civil Judge (Junior Division),

Bidhannagar.

WB 01536