

Order dtd. 09/04/2025.

Record is fixed for clarification and order.  
Both the contesting sides filed their respective haziras.  
Clarification sought for provided.  
Now the record is taken up for passing order.

The factual matrix of plaintiff's case is that plaintiff claims himself to be a lawful and bona fide tenant with respect to 2 dilapidated rooms measuring about 300 sq. ft each with asbestos shed with a right of use of common bath and privy at premises no. 47, Sarat Chandra Dhar Road, PS Baranagar, Kol 90. As per the averment of plaintiff, original owner Suhas Dhar inducted plaintiff's father into the suit property on monthly rent of Rs. 100/- As per the averment of plaintiff no rent receipts were ever issued. Since the death of original owner Subhas Dhar, present defendant claim himself to be the owner of the suit property. As per the averment of plaintiff defendant being the owner is trying to evict the plaintiff from the suit property since September, 2021. By filing the temporary injunction with ad interim rule restraining the defendant and his men and agents from dispossessing the plaintiff from suit property without due course of law.

Plaintiff files copy of GDE nos. 159 and 142, copy of electricity bill, copies of complaints dtd. 24/04/2018, 22/03/2018 and 25/12/2021, copy of tax receipts, copy of aadhaar card and copy of gas book for perusal of this Court.

By filing written objection to the application u/o XXXIX Rule 1 and 2 of CPC defendant submits that plaintiff's father used to work in the Dhar Tin Factory wherein he was allowed to reside in a quarter situated at the suit premises. Since the property has been sold plaintiff was directed to release the quarter. As per the averment of defendant, plaintiff has failed to comply the same and has instituted this suit on a false and frivolous grounds. It is further stated by defendant that defendant has instituted Title Suit 180 of 2023 for eviction of trespasser from the suit property. It is further stated by defendant that due to dilapidated condition of the suit premises Baranagar Municipality issued a notice u/s 223 (1) of West Bengal Municipality Act, 1993. To comply the said order defendant prays for eviction of plaintiff from the suit property. By filing the application defendant prays for vacation of the injunction order as passed in favour of plaintiff.

Order XXXIX Rules 1 and 2 enunciated principles of temporary injunction. As per the provision, the court can grant temporary injunction

Title Suit 206 of 2023

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 irreparable loss of the party is to be considered. Apart from that conduct of the parties is to be considered.

In this instant suit the possession of plaintiff is admitted by defendant. The bone of contention in this suit is with respect to the status of the possession of plaintiff whether they are tenant or trespasser. The said fact has to be adjudicated at the time of trial by adducing evidence. At this instant stage, the possession of the plaintiff in the suit property is to be protected as no one can be dispossessed without due process of law. It is a fact that defendant has produced one copy of Baranagar Municipality wherein a notice of demolition of one storied building situated at premises no. 46, S.C. Dhar Road, Kol 90, Ward 16 has been issued to the defendant Giridhari Lal Sharma. It is to be mentioned here that the suit property is 47, S.C. Dhar Road, Kol 90, Ward 16. Thus plaintiff has establish a prima facie case in his favour. The balance of convenience and inconvenience at this instant stage is tilting towards the plaintiff. If this injunction is not granted in favour of plaintiff, plaintiff would suffer an irreparable loss.

Hence it is,

O R D E R E D

that the application u/o XXXIX Rule 1 and 2 of CPC as filed by the plaintiff on 26/06/2023 is allowed on contest without any order as to costs.

Thus, defendant is hereby restrained from dispossessing the plaintiff without due process of law till the disposal of the suit.

Thus, the application u/o XXXIX Rule 1 and 2 of CPC filed by plaintiff is heard, considered and disposed off.

Fix **08/07/2025** (diary heavily congested) for framing of issues.

Civil Judge (Jr. Divin.)  
J.O. Code : WB 01536