

MISC. CASE :- 74 OF 2025
(CNR No. WBPS01-000222-2025)
(JO CODE No. WB01165)

Before Smt. P. Shukla, Ld. Judge, 2nd Bench.

Order no. - 21
Dt. 17.11.2025

Today is fixed for passing order in respect of the maintainability of the Misc. Case 74 of 2025.

Both parties filed hazira.

The instant Misc. Case is filed by the petitioner with a prayer to pass order and decree for declaration that the applicants are joint tenants in respect of the premises no. 107 Grant Street, P.S. - New Market, Kolkata - 700013.

The factual matrix of the instant Misc. Case in brief is that the applicant received one notice dated 28.03.2025 under Order 21 Rule 97 of CPC in Misc. Case 39 of 2025.

The name of the O.P. no. 2 has been mentioned in the said notice as Bryan Mark Bell.

The applicant no. 2 is also residing at the suit flat and he also asked by the Bailiff to vacate the said flat.

Both the applicants are not the party to the original suit.

It is alleged by the petitioners that decree holders have obtained the decree by suppressing the material facts as misleading the court.

The decree holder raised strong objection and also filed their objection and denial in the form of W/O.

It is submitted by the decree holder that the applicants have sought to claim, the right of tenancy under the heirs of Late Prafulla Chandra Mukherjee on the basis of purported testamentary disposition alleged by George Hicks which is not tenable in law and as such the said application is liable to be rejected.

The applicants are not illegal occupation of decreetal premises and they have no manner of right to remain in possession of the decreetal premises.

Heard. Considered.

Perused the pleadings of both parties, the court is of the view that the instant application involves the mixed question of law and fact.

The Court is of the view that the parties must be given an opportunity to prove or disprove their claim by way of trial.

The fact stated by both the parties in the instant Misc. Case requires to be proved or supported by evidence.

At this juncture, the Court is not inclined to dismiss the Misc. Case.

Hence, it is

ORDERED

that the maintainability point raised by decree holder is not allowed at this stage.

To 19.12.2025 for hearing of the Misc. Case.

D/C by me.

Sd/-

Judge, Bench - II,
P.S.C. Court, Calcutta.

Sd/-

Judge, Bench - II,
P.S.C. Court, Calcutta.