

EJECTMENT SUIT NO. 424 OF 2013 (5810 of 14)
C.N.R No. WBPS01-000493 - 2013

IN THE COURT OF 4TH BENCH, PRESIDENCY SMALL CAUSE
COURT, CALCUTTA.

PRESENT: SMT. ARCHITA SEN, JUDGE, BENCH-4, PRESIDENCY
SMALL CAUSE COURT.

ORDER NO- 131
DATED 02.12.2024:

Today is fixed for passing Order in respect of the petition dated 21/08/2024 under section-151 of the CPC filed by the plaintiff. Both the parties file separate attendance through their respective Ld. Advocates.

The record is taken up for passing Order.

Perused the record including the petition dated 21/08/2024 and the written objection.

Considered.

The petition dated 21/08/2024 contemplates and Order permitting Mr. Amit Kar who is the husband of the present plaintiff, to adduce evidence in terms of Order no.109 dated 16/11/2022. It was stated by the plaintiff that the petitioner is aged about 64 years and is suffering from various ailments, for which she is under constant treatment and supervision of doctor. For that reason it is not possible for her to face the stress of examination and cross examination. Apart from that she has also lost her ability to remember even day to day incident. It was further submitted on behalf of the plaintiff that on the strength of the provision of section 120 of the Evidence Act the husband is the competent person to tender evidence on behalf of wife.

While raising objection against the prayer of the plaintiff it was submitted by the Ld. Advocate for the defendants that the husband of the present plaintiff is not at all a competent person to depose about the reasonable requirement of the plaintiff. Apart from that if the husband of the present plaintiff tenders evidence on behalf of the present plaintiff, that would not be in compliance with Order no.109 dated 16/11/2022. The evidence of Jayashri Kar in person is necessary as she is the only person who knows the real facts. No medical documents have been filed in support of the contention regarding the ailments of the present plaintiff. There is provision for evidence on commission which can be availed by Jayashri Kar. The statement regarding losing the ability of remembering day to day incident is contrary with the statement made by Amit Kar in the further examination in chief, already filed on 21/08/2024, wherein he stated that he has been authorized by Jayashri Kar to adduce evidence. On these grounds the defendants prayed for rejection of the instant petition.

First of all it shall be mentioned that in Order no.109 dated 16/01/2022 this Court observed that the facts that on the consent of original plaintiff Jayashri Kar collected rent from the defendants and after death of the original plaintiff Jayashri Kar became landlord / owner of the suit premises in the strength of the probated Will executed by Khetra Mohan Kar, have to be established by adducing evidence by the petitioner, ie Jayashri Kar. So the evidence which requires to be adduced, as per Order no.109 dated 16/11/2022, is on the point of acquiring right by Jayashri Kar over the suit premises; not on the point of reasonable requirement. The evidence is already completed in this suit and it is on the verge of disposal as the matter was fixed for argument before the defendant raised the jurisdictional issue. It is the suit of the plaintiff and the plaintiff is the *dominus litis*. Previously when the Original plaintiff filed the suit, she did not feel it necessary to come before the Court herself for proving the ground of reasonable requirement. How far the ground of reasonable requirement has been proved by the evidence adduced by the constituted attorney of the original plaintiff, that will be decided by the Court at the time of final adjudication. The petition dated 03/05/2024 filed by the defendants contained the prayer for a direction upon Jayashri Kar to adduce evidence regarding her ownership in terms of Order no.109 dated 16/11/2022 and that petition was allowed by this Court. So the present

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plaintiff Jayashri Kar is not supposed to adduce any other evidence except the ownership in respect of the suit premises, as required by Order no.109 dated 16/11/2022. It is the prerogative of the plaintiff through whom she will adduce evidence. Neither the Court nor the defendants can compel the plaintiff to bring any particular person to adduce evidence to prove the case of the plaintiff. If the right of the present plaintiff is not established to the require decree from the evidence adduced by the plaintiff, then whatever will be the consequence, the plaintiff will have to face. The defendants will not be prejudiced in any way. If the present plaintiff withheld the best evidence, the Court can presume adversely against the plaintiff as per the provision of 114 of the Evidence Act. At this stage this Court is not inclined to disallow Mr. Amit Kar to adduce evidence on behalf of the present plaintiff.

The Ld. Advocate for the defendants relied upon the decision in the case of **Sarita Sharma VS State M.P and Others, 2019 (4) MPLJ 461.** In order to get the benefit of section 120 of the Evidence Act husband of the plaintiff in his affidavit under Order 18, Rule 4 of Civil Procedure Code have to state that he is giving the statement in capacity of her husband and therefore, he is the competent witness to give evidence not as plaintiff's witness but as plaintiff himself. In this suit Mr. Amit Kar stated in his affidavit in chief that he is the husband of present plaintiff and conversant of the facts and circumstances of the suit. Apart from that from the photocopy of the medical documents it appears that it will be hardship for the plaintiff to come before the Court for the purpose of adducing evidence. How far the evidence adduced by Mr. Amit Kar will help the case of the plaintiff, that will be decided at the time of final adjudication.

Accordingly it is

O R D E R E D.

That petition dated 21/08/2024 under under section-151 of the CPC, filed by the plaintiffs is allowed.

The petition dated 21/08/2024 under under section-151 of the CPC is thus disposed of on contest and without any order as to cost.

To 13/01/2025 for further evidence for the plaintiff.

Typed,corrected and printed by me:

Judge, Bench-4
P.S.C.C, Calcutta
J.O Code WB01174

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