

Misc Appeal no. 17 of 2024 (F-17/24)

Order No. 2 dated 05.03.2024

From the noting of the dealing assistant it is found that there is no caveat in this case.

The instant Misc. Appeal is taken up on the point of hearing of the petition under Order 39, Rule 1 and 2 CPC.

Prayer was made to pass an interim direction to restrain the present respondent/defendant from dispossessing the appellant from the suit property.

From the copy of the plaint, it appears that the present appellant had filed the suit seeking decree of declaration of the right, title and interest of the present appellant over the suit property and an order of permanent injunction restraining the defendants from dispossessing the plaintiff from the suit property.

From the documents furnished by the Ld. Advocate for the appellant it appears that the present appellant and the principal respondent and the proforma respondent entered into a partnership agreement for a joint venture development with the original owner of the suit property and that the present appellant and proforma respondent would be entitled 20% and 30% of the profit and loss from the said project respectively and the principal respondent would be entitled to 50% of the profit and loss from the said project.

The said development agreement was also placed before me. It was the submission of the Ld. Advocate for the appellant that one Memorandum of Understanding was executed between the appellants and the defendant by which it was mutually agreed that the appellant would be in possession of a flat on the first floor south west east corner measuring 670 Sq feet at premises No. 7A/1/H/4 Rustamji Parsi Road, PS Cossipore, Kolkata-02 with the power to sell the same to realize the part of his share of his profit as per the partnership agreement. It was also shown to me that the principal respondent had lodged a written complaint at Cossipore PS alleging that the present appellant forcefully took entry into the said flat and the same was registered as Cossipore PS case No. 21 dated 19.02.2024.

I have carefully perused all the documents.

I do not find any strong and cogent ground to hold that the present appellant is in possession of the schedule flat in a legal manner.

In support of his contention decision of the Hon'ble Apex Court as reported in AIR 2004 SC 4609 was placed.

In the said decision the Hon'ble Apex Court held that in case of failure by either party to prove the title and when it is the established fact that the plaintiff is in settled possession, he is entitled to protect his possession.

I have gone through the said decision. I think that to avail the fruits of the said decision the plaintiff has to prove at least prima facie that he is in possession of the suit premises by way of any valid document.

In the instant case, I am not inclined to keep reliance upon the said Memorandum of Understanding which is the vital document on the part of the plaintiff to establish his possession.

I think that the matter should be heard by giving scope to the principal respondent and the proforma respondent to place their respective cases.

Accordingly, I am not inclined to pass any ad-interim order on the petition under Order 39, Rule 1 and 2 CPC without hearing the respondents.

The appellant is directed to take proper step for service of notice upon the respondents immediately.

Fix **22.03.2024** for SR/ AD and appearance and hearing.

Let the case record be transferred to the court of Ld. ADJ, FTC, 1st Court, Sealdah or disposal of the instant Misc appeal.

The appellant is directed to turn up before that court on the next date.

D/C by me

(Anirban Das)/WB00691
ADJ- 1st Court, Sealdah

(Anirban Das) WB-691,
Addl. District Judge,
1 Court, Sealdah