

Misc Appeal No. 35 of 2022

Order dated 17.05.2022

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 admission hearing. Heard the Ld. Advocate for the appellant/plaintiff, perused the impugned order and memo of appeal and considered. The appeal is filed within time. There is sufficient prima facie grounds to admit the instant appeal. Accordingly, the appeal is admitted.

The appellant/plaintiff is directed to file requisites with process fees for service of notice upon the respondents by 21.6.2022.

Office is directed to issue notice on receipt of requisites.

The appellant/plaintiff came up before this court challenging the refusal order of injunction passed by Ld. Civil Judge (Jr. Divn) 1st Court, Sealdah in TS 170 of 2022.

Ld. Counsel appearing on behalf of the appellant/plaintiff has submitted that the predecessor of his client Smt. Astobala Das was the recorded Thika tenant of the suit structure with a right of common passage which runs from North to South. Said Astobala died on 21.8.2018 leaving behind his clients as her legal heirs, the present plaintiffs. He has also contended that they are also Thika tenant by way of inheritance. The said passage has been described in schedule A of the plaint. According to him the defendant illegally blocked the said Municipal passage without the permission from Municipal authority by fixing Iron grilled gate on January, 2022. The appellant sought redress before the police, but in vain.

Ld. Counsel appearing on behalf of the appellant has submitted that existence of the said common passage can be followed from their deeds and also from the annexed map therewith. He has also relied upon the decision reported in **2022 (1) ICC 408 (Cal)**.

He has filed several documents in support of his contention.

I have perused the same. The documents so tendered by the appellant/plaintiff are all standing in the name of Astobala Das, their purported predecessor. It is the contention of the appellant that after demise of Astobala in the year 2018 they have inherited the Thika tenancy, but nothing has been advanced to show that the name of the appellant has

been mutated in the record of KMC. The cited judicial precedent has no application in the present case simply because of the reason the appellant failed to establish their prima facie possession over the suit property through line of succession of their purported predecessor Astabala.

These being the position, this court is not inclined to allow the prayer as sought for. Hence, prayer for injunction is **refused** at this stage.

To date 21.6.2022 for SR/ AD and appearance.

D/C by me

ADJ-1

Addl. District Judge,
1st Court, Sealdah.