

**In the Court of Additional District & Sessions Judge,
2nd Court, Sealdah, South 24 Parganas
Misc. Appeal 57 of 2023
CIS Registration No.60 of 2023
Present: Sri Abir Chatterjee, Additional Dist. & Sess. Judge.
Judicial Officer's Code : WB-00833**

Order Number 3 dated 06.09.2023

Case record is put up by petition.

One application under Order 39 Rule 1 & 2 read with Section 151 of CPC is filed.

Issue notice upon the respondent / defendant calling upon them to show cause within 15 days from the receipt of this notice as to why the appellants / plaintiffs prayer for injunction should not be granted.

Ld. Advocate for the appellants / plaintiffs prays for an ad-interim order on the ground of urgency.

It was submitted that brothers Tapas Neogy and appellant no.2 / plaintiff Arup Neogy were joint tenants in respect of the suit shop room under KMC at a monthly rental of Rs.415 and maintenance charge of Rs.208 per month. The electricity of the shop stands in the name of appellant No.2/ plaintiff Arup Neogy. That rent and charges are paid regularly. It was stated that Tapas Neogy expired leaving behind a will bequeathing his assets in favour of the appellants being Arup Neogy and sister Ratna Neogy. It was alleged that respondent no.1 is a fictitious lady who claims a relationship with deceased Tapas Neogy. The respondent no.1 along with the respondent no.3 are trying to oust the appellant from their rightful possession of the suit property.

Injunction was sought to protect the possession of the appellants. The case reported in AIR 2004 SC 4609 and a reported decision of Calcutta High Court in WP 350 of 2013 was referred.

Perused the documents filed. This is a suit for permanent injunction which comes within the ambit of Section 38 of Specific Relief Act. The relief under Section 38 of Specific Relief Act is exempted from service of notice in view of Section 586(4) of K.M.C. Act.

The documents filed shows that Tapas Neogy and Arup Neogy are both lease/licence holder in respect of the case property. Copy of death certificate reveals that Tapas Neogy expired on 27.06.2022. A series of rent receipts issued by K.M.C. have been filed all disclosing the name of Tapas Neogy and Arup Neogy as licence

holders.

Perused the decisions as cited by the appellant. The facts therein are different from the case in hand for which the principles of law cannot be applied in this instant case.

In view of Section 2g of W.B.P.T. Act, the spouse and other relations of the deceased tenants have some right reserved to them after death of the original tenant. The plaintiff / appellants did not disclose the relations which the respondent no.1 is claiming with the deceased. At the same time no overt acts has been attributed to the respondent no.1. In fact respondent no.1 had approached the landlord to meet her grievance. Respondent no.1 did not resort to any undue process against the appellants.

The tenanted / licensed premises cannot be subject matter of a will for which the right of appellant no.2 is not prima facie satisfactory. However, the appellant no.2 being a tenant is entitled to keep his possession. In such circumstance, a case for interim injunction is made out.

It is,

ORDERED

that the defendant no.2 and 3 are restrained from depriving the appellant no.2 from his rightful possession of the suit property without due process of law till 05.10.2023.

Appellant to comply with the provisions of Order 39 Rule 3(a) and (b) positively.

To date.

*Dict. & Corr. by me,
Sd/- (A. Chatterjee)
Addl. Dist. & Sess. Judge, 2nd Court,
Sealdah.*

*Sd/-(A. Chatterjee)
Addl. Dist. & Sess. Judge, 2nd Court,
Sealdah.*