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IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
Ordinary Original Civil Jurisdiction

G.A. No. 18/2025

In

C.S. 702 of 1903

GANESH SARAN AGARWALA VERSUS KANHAYA LAL
AGARWALLA

Before:

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 13th JUNE, 2025

Appearance
Ashutosh
Mukherjee, Adv.
...for the Defendants/Respondents

The Court: This is an application filed by the Trustees Ganesh Saran Agarwala and Govind Das Agarwal both Trustees to the Estate of Babulal Agarwala of No. 169A Mahatma Gandhi Road Kolkata – 700007. This instant application is filed praying for the following reliefs:

- a) Leave be granted to the petitioners as the Trustees to enter into a lease Agreement for letting out the building standing at premises no. 1/1, Babulal Lane Kolkata – 700,007 in terms of the offer of Shri Varun Mundhra, being Annexure 'E' or on such terms/conditions as this Hon'ble Court may deem fit and proper.
- b) Leave be given to the petitioners to insert the gist of this present application in a local. English Newspaper.
- c) Such further and other order or orders be made and/or direction or directions be given as this Hon'ble Court may deem fit and proper.

The contention of the petitioners may be summed up thus.

1. Babulal Agarwalla, since deceased who was a Hindu inhabitant governed by Mitakshara school of Hindu Law and was the absolute owner of several

immovable properties in or around the city of Calcutta and situated in and around Burrabazar within the Jurisdiction of this Court as well as a temple at Brindawan outside the jurisdiction of this Court where the deity namely Shree Radha Ballav Jew was installed. All such properties were let out to different tenants.

2. The said Babulal Agarwalla died in October 1873, and prior to his death he made and published his Last Will and Testament dated 6th August 1873 whereby the said Babulal Agarwalla, since deceased created a trust in respect of his aforesaid immoveable properties under the name and style of "Estate Babulal Agarwalla" particularly for religious and charitable purpose. The Probate in respect of the Last Will and Testament dated 6th August 1873 of the said Babulal Agarwalla since deceased was granted by this Court on 30th December 1883 and in terms of the said Will the properties belonging to the Estate of Babulal Agarwalla deceased vested upon the trust known as "Estate Babulal Agarwalla".
3. Under the provisions of the said Last Will and Testament dated 6th August 1873, the initial trustees named therein assumed charge of the said Trust Estate and started managing and/or administrating the same.
4. In the course of management and administration of the Trust Estate various disputes and differences arose which led to the filing of a suit being Suit No. 702 of 1903 (Amrit Bibi VS Kohyal Agarwalla) praying inter alia for framing of a scheme for management and administration of the said Trust Estate.
5. From time to time new Trustees were appointed pursuant to the Orders passed by this Hon'ble Court in the said suit. For the purpose of passing of the necessary orders by this Court the said suit being C.S. No. 702 of 1903 has still been kept alive and a large number of orders have been passed in the said suit by this Court for safeguarding the properties belonging to the Trust Estate.

6. By order dated 11th July 1944 passed in Suit No-702 of 1903 Mr. T. Chatterjee, Bar at Law was appointed as a Special Referee to prepare a Scheme of Administration of the 'Estate Babulal Agarwalla' and on the basis thereof a scheme was framed which was duly approved by this Court. The said scheme provided that for the purpose of obtaining any orders from this Court concerning the affairs of the said Trust Estate the said suit being C.S. No. 702 of 1903 has been deemed as pending.
7. The Trust Estate has at all material times thereafter been managed by such Trustees and at present is being managed by the Petitioners as the Trustees appointed pursuant to respective orders passed under the said scheme.
8. The Trust Estate has several properties in or around the City of Kolkata. Such Properties were either leased out or let out on monthly tenancy basis and presently occupied by tenants paying very paltry rent which is not enough to even meet the municipal taxes and/or the cost of maintenance of the said properties as well as the regular expenses of the Trust.
9. Most of the buildings of the said Trust Estate are more than 125 years old and are presently in extreme dilapidated condition due to lack of proper maintenance of the same which was not possible owing to scarcity and/or dearth of funds.
10. Out of the properties of trust Estate situated at Babulal Lane, Kolkata – 700,007 the premises no. 1/1 Babulal Lane, Kolkata – 700007, herein referred to as the subject Premises is a piece and parcel of land measuring 2 cottahs, 5 Chittacks, 12 Square Feet more or less together with 150 years old three storied building constructed thereat. The subject premises being No. 1/1 Babulal Lane admeasuring 2 cottahs 5 Chittacks 15 square Feet is located approximately 180 feet inside from the Main Road on a very narrow non-motorable lane.

11. The premises being premises No. 1/1 Babulal Lane Kolkata- 700007 is occupied by five number of tenants in the ground plus two storied dilapidated building. The said building was made by Surkli-Chuna Mortar and due to Seepage of water further due to lack of proper maintenance of the aforesaid premises being premises no. 1/1 Babulal Lane Kolkata-700,007, the same with the passage of time has become dilapidated and has become a highly dangerous building. The said building due to the nature of its construction namely Surkhi-chuna or burnt clay with lime mortar which was used 150 years ago is beyond any kind of reliable repair.
12. The petitioners are unable to repair or re-construct the building standing at the said premises being 1/1 Babulal Lane, Kolkata – 700007, in view of high expanses and/or costs involved. Moreover the tenants of the said building have desisted from paying any rent citing the ground of non-repair of the said building.
13. Due to passage of time the condition of the building deteriorated further and ultimately the said building has become highly dangerous and beyond fruitful repairs.
14. In these circumstances one of the tenant of the ground floor shop room namely Mr. R.R. Mundhra has approached the petitioners by means of an offer letter dated 06.09.2024 written by a builder of the Howrah locality namely Shri Varun Mundhra for taking on lease the subject Premises standing at Premises no. 1/1 Babulal Lane, Kolkata – 700007 with a promise to re-build on the terms as contained in his offer letter.

Heard Learned Advocate for the petitioner, perused the petition filed and the materials on record.

Upon hearing the Learned Advocate and upon perusing the scheme framed for administering the “Estate Babulal Agarwalla,” and considering the age of the subject

premises and the present condition, and the difficulties faced to repair the subject premises this Court is of the view that the petitioners/applicants have been able to make out a case for grant of permission to give lease of subject premises. Thus the petition should be allowed.

Let there be an order in terms of prayer a) of the Notice of Motion dated 3rd day of January 2025.

Fix 02/07/2025 for filing Draft Agreement of lease.

(BISWAROOP CHOWDHURY, J.)

A.Bhar (P.A.).