

OCD-8

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA  
ORIGINAL SIDE  
[COMMERCIAL DIVISION]

IA No. GA-COM/1/2024  
In CS-COM/738/2024

RAJA TARAFDAR AND ANOTHER  
-VS-  
SK. MD ASHRAF AND OTHERS

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : July 30, 2024.

Appearance :

Mr. Saptarshi Kr. Mal, Adv.  
Mr. Asif Sohail Tarafdar, Adv.  
Ms. Fatima Hasan, Adv.  
...for the plaintiffs

The Court: Mr. Saptarshi Kr. Mal, learned Advocate, is appearing for the plaintiffs.

The plaintiffs have filed the present application for grant of ad interim injunction.

The plaintiffs are the owners of the suit property. When the plaintiffs have purchased the said property, defendants were already in occupation of the property. The original tenant Sk. Md. Ibrahim died on 29<sup>th</sup> September, 2009 and wife of Sk. Md. Ibrahim was predeceased to him. After the death of Sk. Md. Ibrahim, the defendant nos. 1 to 6 being the legal heirs of the deceased Sk. Md. Ibrahim are in occupation of the premises.

Counsel for the plaintiffs submits that by the operation of Section 2(g) of the West Bengal Premises Tenancy Act, 1997, after the passage of five years from the date of death of Sk. Md. Ibrahim, the occupation of the

defendants are illegal and as such the defendants do not have any right to continue with the possession over the suit property.

Counsel for the plaintiffs submits that after the death of the original owner, the defendants being the legal heirs have not come forward for entering into any fresh agreement with the plaintiffs and also paying the monthly rent to the plaintiffs. Counsel for the plaintiffs submits that recently the plaintiffs came to know that the defendants have also entered into a partnership deed with respect of the business under the name and style of 'M/S. SK. HABIBULLA & SK. MD. IBRAHIM LAUNDRY'.

Counsel for the plaintiffs submits that the plaintiffs came to know that the defendants are trying to alienate the property to some third party and also making addition and alteration over the said property without the consent of the plaintiffs.

The plaintiffs have filed the supplementary affidavit by enclosing the photographs showing that the defendants are making construction over the suit property.

Counsel for the plaintiffs submits that the defendants have no right over the property after five years from the date of death of their father and the defendants are in illegal occupation of the premises and now they are trying to alienate the property to the third party and also making construction over the property and if at this stage ad interim order is not passed, plaintiffs will suffer irreparable loss and injury.

Considered the submission made by the counsel for the plaintiffs.

Perused the materials on record.

Admittedly the plaintiffs have purchased the property by way of deed of conveyance but the defendants are in occupation of the property. The original tenant has expired and after the death of the original tenant, the defendants have no legal right over the property after the five years in terms of Section 2(g) of the West Bengal Premises Tenancy Act. The plaintiffs have enclosed the partnership deed as well as the photographs wherein it reveal that the defendants have created partnership and also making construction over the said property.

Considering the above, this Court finds that the plaintiffs have made out a prima facie case and balance of convenience and inconvenience is in favour of the plaintiffs and if at this stage ad interim order is not passed, the plaintiffs will suffer irreparable loss and injury.

Accordingly, the defendants, their men and agents are restrained from alienating the property to any third party or making any construction over the said property till 9<sup>th</sup> September, 2024.

The plaintiffs are directed to send the copy of the application along with the plaint and documents to the defendants and to file affidavit-of-service on the returnable date.

List the matter on 9<sup>th</sup> September, 2024.

(KRISHNA RAO, J.)