

OD-24

ORDER SHEET

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

IA No. GA/1/2023  
In  
CS/303/2022

LAKKHI KAR AND ORS.  
-VS-  
SHIBU KAR

BEFORE:  
The Hon'ble JUSTICE KRISHNA RAO  
Date : June 26, 2024.

Appearance:  
Mr. Altamash Alim, Adv.  
...for the plaintiffs

The Court: Mr. Altamash Alim, learned advocate, is appearing for the plaintiffs.

None appears on behalf of the defendant.

The matter was listed on 22<sup>nd</sup> March, 2024 and on the said date also none appeared on behalf of the defendant and for the interest of justice the case was adjourned.

Today also when the matter is called, none appears on behalf of the defendant.

The plaintiffs have filed an application being GA/1/2023 praying for an order of injunction restraining the plaintiffs as well as the defendant from transferring and/or alienating or encumbering the schedule of properties. The plaintiffs have also prayed for appointment of Receiver to collect rent from the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> schedule of properties and to distribute the same to the plaintiffs and the defendant in equal share.

This Court finds that by an order dated 1<sup>st</sup> February, 2023, the parties were directed to maintain status quo as of date in respect of the estate left behind by the deceased being the subject matter of the partition suit.

The plaintiffs have filed this suit praying for partition of the suit properties and the suit properties consisting of eight properties which is mentioned as schedule of properties from 1<sup>st</sup> schedule to 8<sup>th</sup> schedule. In the present application in paragraph 32, the plaintiffs have made a specific averments that the defendant all along acting adverse to the interest of the plaintiffs and is controlling all the rented properties under the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> schedule of properties and taking the advantage of the sub-tenancy right, he is changing tenants one after another taking huge salami from the prospective tenants and not sharing a single penny of this profits. Whenever the plaintiffs are demanding their share of those profits, the defendant claiming himself that he will not share any rents and profits as the landlords are in his control.

In reply to the said averments, the defendant has stated that admittedly all the properties are rented properties and the same is not partitionable. He also stated that he is the sole tenant of most of the rented properties on the basis of no objection letter issued by the predecessor in interest of the plaintiff no.3 and the other plaintiffs.

Learned counsel for the plaintiffs submits that no objection which the defendant is relying upon is a forged and fabricated document and none of the plaintiffs have given no objection for allowing the defendant to let out the property and to enjoy the rent of the said properties. The defendant by way of supplementary affidavit in the affidavit-in-opposition has admitted

that the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> have been let out to the tenants and is receiving the rent but the properties cannot be partitioned between the legal heirs of the original deceased tenant.

As regard the 8<sup>th</sup> schedule of the property, the defendant stated that he is depositing the rent before the Rent Controller and has submitted one challan dated 21<sup>st</sup> October, 2022 showing the deposit of rent of Rs.222/-. The defendant has also taken the stand that the properties are Thika property and the same cannot be partitioned.

The plaintiffs have relied upon the judgment reported in **2003 SCC OnLine Cal 54 Musamat Afroz Begum & Ors. Vs. Abdul Quddus & Ors.** wherein Hon'ble Division Bench has decided the issue whether Thika tenancy is partible amongst joint tenants who have inherited the original Thika tenant's right and in the said judgment the Hon'ble Division Bench of this Court has held as follows:

“In our opinion, as per the present law, inherited *thika* tenancy rights give the co-sharers a rights to obtain a partition amongst themselves. If there is a joint ownership, ordinarily speaking every joint owner should be entitled after observance of the due process of law to claim something which is his own and thereafter to enjoy it privately all by himself. The policy of the law is not to keep parties in joint ownership whether they like it or not. Another principle is that every citizen is, generally speaking, free to do what he pleases with his property, unless there is some law, rule or usage prohibiting him from acting him in such manner. We find from the *Thika* Tenancy Act and the Rules, that no provisions either clearly or by express implication prohibits the partition of *thika* tenancy as amongst co-sharers. Rule 3(h) states that the land boundaries shall be kept intact and well

defined but gives no indication that within such boundaries no new boundaries will be created either, indicating separation amongst co-sharers. Accordingly the first point of the appellant fails.”

Heard the learned counsel for the plaintiff. Perused the materials on record and the affidavit-in-opposition and the supplementary affidavit filed by the defendant.

Plaintiffs have filed the suit for partition and this Court has also passed an order of injunction directing the parties to maintain status quo. Now the question with regard to appointment of Receiver as per the prayer made by the counsel for the plaintiffs.

The defendant has admitted that the defendant has let out the properties and taking the benefit of rent from the tenants taking the benefit of the no objection alleged to have been issued by the plaintiffs but the said no objection has been disputed by the plaintiffs.

Considering above, this Court finds that the defendant has admitted that the properties have been let out and he is taking the benefit of the rent, accordingly, this is a fit case to appoint a Receiver to collect monthly rent of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> schedule of the property.

Mr. Pritam Choudhury, Advocate, Bar Association Room No. 17, contact no. 9831775807, is appointed as Receiver for the purpose of collecting rent from the schedule of the properties i.e. 3<sup>rd</sup> to 6<sup>th</sup> schedule of the property as mentioned below:

### **THIRD SCHEDULE PROPERTY**

A small shop measuring about 30 Square Feet (3 ft x 10 fts) at 10B, Jackson Lane, Po & PS: Burrabazar, Kolkata-700001

**FOURTH SCHEDULE PROPERTY**

A small *gaddi* measuring about 18 Fts in length and 8 Fts by breadth and a small adjacent godown at P-7, Old China Bazar Street, Kolkata-700001

**FIFTH SCHEDULE PROPERTY**

All that two godowns, measuring about 120 Sq Fts (more or less) situated at 110/1E, Kashipore Road, Kolkata-700002.

**SIXTH SCHEDULE PROPERTY**

All that one godown, measuring about 24 sq fts (more or less) situated at 110/1M, Kashipore Road, Kolkata-700002.

The Receiver is directed to prepare the list of tenants and the rent of each premises. The Receiver shall month by month collect rent from the month of July 2024 and to issue rent receipts to the tenants and the counterfoil be submitted before this Court along with the report in every three month. The Receiver shall open bank account in his/her name and to deposit the monthly rent in the said account.

The remuneration of the Receiver is fixed at Rs.12,000/- per month and all the plaintiffs shall pay the said remuneration to the Receiver in equal share in each month.

IA No. GA/1/2023 is disposed of.

(KRISHNA RAO, J.)