

(2012) 07 CAL CK 0026

Calcutta High Court

Case No: C.O. No. 595 of 2007

Hafiz Ahmed Khan

APPELLANT

Vs

Smt. Tapasi Das and Others

RESPONDENT

Date of Decision: July 13, 2012**Acts Referred:**

- Constitution of India, 1950 - Article 227

Hon'ble Judges: Prasenjit Mandal, J**Bench:** Single Bench**Advocate:** Aniruddha Chatterjee, Mr. Manish Ray and Mr. S.N. Arefin, for the Appellant;
S.P. Roy Chowdhury, J.R. Chatterjee and Mr. Tarak Nath Halder, for the Respondent**Final Decision:** Dismissed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the defendant No. 1 / appellant No. 1 and is directed against the order dated February 3, 2007 passed by the learned Additional District Judge, Sealdah in Misc. Appeal No. 8 of 2007 thereby confirming an order of injunction dated January 12, 2007 passed by the learned Civil Judge (Junior Division), 2nd Court, Sealdah in Title Suit No. 335 of 2006. The plaintiff / respondent No. 1 / opposite party No. 1 herein instituted a suit being Title Suit No. 335 of 2006 for declaration of his tenancy right, permanent injunction and other reliefs against the defendant No. 1 / petitioner herein and the other defendants / opposite parties herein in respect of two flats situated on the 3rd Floor of the premises as described in the schedule to the plaint. While filing the said suit, the plaintiff moved an application for temporary injunction along with the prayer for interim order of injunction. While dealing with the said application, the learned Trial Judge granted ad interim order of injunction. Thereafter, upon consideration of the application for temporary injunction, its objection, affidavits and other materials filed by the parties, the learned Trial Judge granted the relief of temporary injunction as prayed for by the plaintiff in her application. Thereafter, the defendant No. 1 / appellant No.

- 1 / petitioner herein preferred a misc. appeal being Misc. Appeal No. 8 of 2007 and that misc. appeal was dismissed on contest without costs. Being aggrieved, the defendant No. 1 / appellant No. 1 / petitioner herein has preferred this application.
2. Now, the question is whether the impugned order should be sustained.
3. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that in the instant case, both the Courts below have come to the same conclusion that the plaintiff / respondent No. 1 / opposite party No. 1 clearly has proved prima facie case to go for trial. The Courts below have also come to the concurrent findings that the balance of convenience and inconvenience in granting injunction is in favour of the plaintiff and that if temporary injunction as prayed for is not granted, the plaintiff may suffer irreparable loss. Accordingly, both the Courts below have come to the concurrent findings in support of the prayer of the plaintiff for grant of temporary injunction.
4. The plaintiff / respondent No. 1 / opposite party No. 1 herein has contended that the defendant nos. 1, 2 & 3 are the owners of the premises in suit and the defendant No. 4 is a developer and an agreement was held between the owners of the suit property and the developer to the effect that the developer would make construction of the premises and after such construction, the developer would be at liberty to induct tenants in respect of two flats situated on the third floor of the premises according to his own choice and he is at liberty to get the premium and the rent from the tenants.
5. The defendant No. 1 has claimed that the said two flats are in possession under him and he inducted his son and daughter in respect of the said two flats in 2006 and he has been realising rents from them. On the other hand, the plaintiff has filed rent receipts that he has been paying rent for the two flats in question to the defendant nos. 1, 2 & 3, i.e., owners of the suit property and they granted rent receipts in her whenever the rent was tendered to them.
6. The defendants are not in a position to deny the signatures of the defendant nos. 1, 2 & 3 appearing on the rents receipts issued by them in favour of the plaintiff. It is also observed by the Courts below that the grant of rent receipts by the father, i.e., defendant No. 1 in favour of his son and daughter may be collusive and such collusion has been made so that the plaintiff may not enjoy the peaceful possession of the suit property. Thus, I find that the rival claims have been set out in the said suit. The defendant No. 4 supports the contention of the plaintiff that as per agreement between the owners of the land and him as developer, he was free to induct tenants of his choice at the said two flats in question and accordingly, he inducted the plaintiff as tenant in the said two flats and the defendant nos. 1, 2, & 3 granted rent receipts accordingly in favour of the plaintiff.
7. Thus, on the basis of the materials on record, the learned Trial Judge has observed that the plaintiff has shown prima facie case to go for trial. The Appellate

Court has supported such view of prima facie case in favour of the plaintiff. Both the Courts below are also of the same view that the balance of convenience and inconvenience are in favour of the plaintiff and that if injunction as prayed for by the plaintiff is not granted, the plaintiff may suffer irreparable loss because she had invested huge money for residing thereat. Thus, I find that both the Courts below have considered the basic principles in the matter of granting injunction and they have supported the plaintiff case.

8. During the course of hearing, Mr. Aniruddha Chatterjee, learned Advocate appearing for the petitioner, has submitted that in the instant case, the possession of the two flats in question has not been clearly determined and as such, it will not be proper to grant injunction in favour of the plaintiff. There is a rival claim as to possession. The son and daughter of the defendant No. 1 are the tenants inducted by their father, that is, the defendant No. 1 and so, unless and until, actual finding as to possession is made, no order of temporary injunction should have been passed.

9. In support of his contention, Mr. Chatterjee has referred to the decision of [Kishore Kumar Khaitan and Another Vs. Praveen Kumar Singh](#), and thus, he submits that the order of grant of injunction is not proper.

10. With due respect to Mr. Chatterjee, I am of the view that this decision will not be applicable in the instant case because both the Courts below have come to the concurrent finding that the plaintiff has shown prima facie case to go for trial and that the plaintiff is a tenant in respect of the two flats in question.

11. Anyway, the ultimate decision will be taken at the time of trial. The decision of Kishore Kumar Khaitan & anr. (supra) was with regard to ad interim order of injunction when the main application for injunction was pending and the Court was to assess on the basis of application for temporary injunction supported by affidavits and other materials filed on behalf of the plaintiff. But, in the instant case, the learned Trial Judge has disposed of the application for temporary injunction on the basis of the application for temporary injunction, its objection, affidavits and annexures filed by the parties. The application for temporary injunction was disposed of on contests. Thereafter, the aforesaid misc. appeal filed by the petitioner was also dismissed on contests. Therefore, I am of the view that the decision of Kishore Kumar Khaitan & anr. (supra) will not be applicable in the instant case.

12. While arguing, Mr. Jiban Ratan Chatterjee, learned Senior Counsel appearing for the opposite parties has referred to the decision of [Kartarey and Others Vs. The State of Uttar Pradesh](#), and thus, he submits that the concurrent findings of fact should not be interfered with even in an appeal before the Apex Court.

13. In the light of the observations made above, I am of the view that the concurrent findings of the Courts below relating to injunction matter are based on materials on record and, therefore, the said findings do not suffer from any perversity.

14. Under the circumstances, in exercising the jurisdiction under Article 227 of the Constitution of India, I am of the view that such concurrent findings should not be interfered with in disposing of the present application. Accordingly, there is no scope of interference with the impugned order.

15. So, the application is dismissed.

16. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.