

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/60/2023
with
EC/135/2018
IA No.GA/1/2023

MALCOM MUNCIF
VERSUS
MAGANMAL SETHIA

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE UDAY KUMAR
Date : 30th June, 2023.

Appearance:
Mr. Sanjay Saha, Adv.
Mr. S.S. Bayerd, Adv.
...for the appellant.

Ms. Noelle Banerjee, Adv.
Mr. Abhidipto Tarafder, Adv.
Mr. Dipak Dey, Adv.
Ms. Shreyasi Manna, Adv.
...for the respondent.

The Court : We have heard learned Counsel for the parties.

The challenge to the order under appeal is not unusual when a litigant suffering a decree of eviction comes out with a plea of misdescription of the property.

The appeal is arising out of an order rejecting the application filed by the tenant/respondent alleging misdescription of the property in the execution proceeding.

Admittedly, the respondent is the owner of the flat measuring about 1350 sq. ft. covered area on the fourth floor with one open car parking space on the ground floor of the building 'Royal Court' situated at Premises No.5/1, Russel Street, Kolkata- 700 071. In the eviction proceeding similar plea was raised and it was decided against the appellant. In fact, during the pendency of the suit, a Special Officer was appointed to inspect Flat No.20 at Premises No.5/1, Russel Street, Kolkata – 700 071 and file a report. The Special Officer was prevented by the appellant to carry out such inspection. This certainly creates an adverse presumption against the respondent alleging misdescription of the suit property.

The learned Single Judge had relied upon an order dated 9th January, 2019 in connection with the said execution application where this point was earlier dealt with and now it had attained finality. The appellant did not allege that the appellant is in possession of any other flat under the plaintiff. In fact, he tendered rent for his occupation as submitted on his behalf to the erstwhile landlord. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge. In fact, the possession has already been delivered to the decree-holder.

Accordingly, the appeal being APOT/60/2023 and the application being IA No.GA/1/2023 stand dismissed.

The Special Officer shall hand over keys to the decree-holder in presence of the learned advocates for the parties after making an inventory and shall give 48 hours to the appellant to remove the articles and/or belongings of the appellant and shall discharge on deliver of possession. The formal satisfaction of the decree

and any other incidental direction upon the respondent with regard to his remuneration may be finally passed in the execution proceeding. We have been informed that the matter is fixed before the learned Single Judge on 10th July, 2023. The Special Officer shall carry out this direction in the meantime and if required with police help. A minutes of the proceeding shall be drawn up in presence of the learned advocates for the parties and shall be filed before the learned Single Judge on 10th July, 2023.

The Special Officer shall be entitled to a further remuneration of 1000 GMs., to be paid by the decree-holder at the first instance.

[SOUMEN SEN, J.]

[UDAY KUMAR, J.]