

Ct. No. 652
22.05
2024
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C.O. 3339 of 2018
Smt. Puspadevi Gupta
-Versus-
Sri Kamal Narayan Gupta & Ors.

Mr. Soumak Bera **...For the Petitioner**

Mr. Sandipan Pal
Mr. Pradip Maity
Ms. Tithi Chakraborty **...For the Opposite Parties**

Opposite party Nos. 1 and 2 as plaintiff filed a suit for ejectment of the defendants being the lessees on determination of lease and for injunction against the petitioner/defendant and opposite party Nos. 3 and 4, in Other Suit No. 120 of 2008. The petitioner herein appeared in the said suit and filed written statement and denied all material allegations made in the plaint.

The petitioner states that the plaintiff made a false compromise petition dated 18th May, 2008 with the defendant No. 3 wherein the defendant No. 3 stated that he does not have any objection of taking over possession of the suit premises by the plaintiffs. In the said compromise petition he also stated that the said business is stopped and the partnership firm came to an end and the suit premises is now under the possession of defendant Nos. 1 and 2 and he has no right or possession in any portion of the suit premises.

During continuation of the said suit, the petitioner filed the instant petition for permission to sell the old machineries of the factory lying in the suit premises for long

time. The husband of the petitioner since deceased was the sole owner of the said business after the registered deed of release dated 16th February, 1985 executed by the defendant No. 3 on 16th February, 1985. The Court below after hearing the parties was pleased to reject the said application dated 17th February, 2017.

Being aggrieved by that order Mr. Soumak Bera, learned Counsel appearing on behalf of the petitioner submits that the Court below should have allowed the application of the petitioner for permission to sell the old machineries of the factory of the deceased husband of the petitioner in view of the deed of release executed by defendant No. 3 on 16th February, 1985 in favour of the husband of the petitioner. He further submits that the petitioner and his son being the defendant No. 2 are the only legal heirs of the deceased husband of the petitioner and have every right to sell the old machineries of the said factory.

He further submits learned Court below failed to appreciate that the said factory has many machineries and many parts and other equipments which are very difficult to explain or to give description of the said machineries and due to long pendency of the case, said machineries are getting destroyed day by day. Accordingly, he has prayed

for setting aside the order impugned and for allowing the petitioner to sell the said plant and machineries.

Mr. Sandipan Pal, learned Counsel appearing on behalf of the opposite parties raised objection contending that the order impugned does not call for any interference by this Court since the application was not in proper form. Moreover, it is not known to the opposite parties as to which furniture or machineries, defendant wants to sell from the suit property. Accordingly, the order impugned does not call for any interference by this Court.

Having considered the submissions made on behalf of both the parties and also on perusal of the order impugned, it appears that the Court below has rejected the said prayer on the ground that the defendant No. 1 did not give any details and particulars of the machineries, which he wants to sell. Furthermore, the present status and also the condition of the machineries which are lying in the suit property are not known to the Court and as such the Court below became apprehensive to give permission to defendant No. 1 to sell out the machineries that are lying in the suit premises.

Having considered the facts and circumstances of the case, C.O. 3339 of 2018 is thereby disposed of giving liberty to the petitioner to file a fresh application stating

details of the machineries which the petitioner herein wants to sell out. He will also be at liberty to pray for local inspection commission before the Court below and in the event of filing such applications by the petitioner within a period of four weeks from the date, the Court below will dispose of such application preferably within a period of four weeks from the date of filing such application, without being influenced by any observation made herein.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)