

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

RESERVED ON: 13.05.2025

DELIVERED ON: 12.08.2025

PRESENT:

THE HON'BLE MR. JUSTICE BISWAROOP CHOWDHURY

C.S. No. 329 OF 2012

IN

IA NO: GA/1/2012 (Old No: GA/2769/2012)

MERAJ RASHID

- VERSUS -

MRS. ALISON

Appearance:

Mr. Joyak Kumar Gupta, Adv.

Mr. A. Rosul, Adv.

Mr. Steven S. Biswas, Adv.

..... For the plaintiff

Biswaroop Chowdhury, J.: This Suit is instituted by the Plaintiff against the defendant with a prayer for the following reliefs:

- a) Declaration that the defendant is a trespasser and is illegally occupying the suit flat as described in the schedule 'A' being



Annexure 'A' to the plaint and her possession thereof has become that of a trespasser.

- b) Decree for mandatory injunction upon the defendant to return back the possession of the suit flat particulars whereof are mentioned in the schedule 'A' forthwith to the plaintiff.
- c) Decree for eviction of the defendant including her men agents and assigns from the suit flat as described in the schedule 'A' being Annexure 'A' to the plaint;
- d) Decree for recovery of khas possession of the suit flat by evicting the defendant and his men agents and assigns;
- e) Decree for damages and mesne profit against the defendant from 19th September 2012 until possession of the suit flat as described in the schedule to the plaint is delivered to the plaintiff at the rate of Rs. 500/- per diem or at such other rate or rates as this Hon'ble Court may think fit and proper;
- f) Decree for perpetual Injunction restraining the defendant, her men agents and servants assigns and/or by anyone of them from encumbering, alienating disposing leasing, renting and/or damaging the suit flat as described in the schedule to the plaint.
- g) Receiver.
- h) Injunction.
- i) Attachment.
- j) Costs.



k) Such further and/or other relief or reliefs.

The contention of the plaintiff may be summed up thus:

1. The plaintiff is the owner of premises No. 8 A.K. Md. Siddique Lane Kolkata 700016 within the jurisdiction of this Court consisting of partly two storied and partly three storied brick built house by virtue of Sale Deed dated March 16, 1982 registered at sub-Registrar of Assurances, Calcutta and also subsequently by way of registered Deed of Gift dated May 5, 1998 at Registrar of Assurance Calcutta.
2. One Mrs. C.D. Philips was a tenant in respect of a flat being flat No. 4 situated at the ground floor consisting of two rooms one Kitchen and one bath room measuring about 500 square feet as described in the schedule 'A' at a monthly rent of Rs. 780/- per month.
3. Mrs. C.D Philips was staying alone in the said suit premises and paid the monthly rent till December 2010 to the plaintiff. From January 2011 the said Mrs. C.D. Philips did not pay any rent and has become a defaulter.
4. Mrs. C.D Phillips during her stay was looked after by the members of Christian Community. In the month of February 2012 Mrs. Phillips became ill and was taken by the members of the Christian Community to their place for taking proper care. When Mrs. Philips



left the suit flat after handing over the possession of the said flat the plaintiff, after taking possession of the said suit flat in the month of March 2012 the plaintiff had put the padlock in the suit flat and kept the same under the plaintiff's possession. The plaintiff came to know from reliable source that Mrs. C.D. Phillips died in March 2012.

5. Suddenly on 18th September 2012 one Mrs. Alison the defendant herein tried to enter the suit property by use of force with 4 to 5 associates in order to transfer the suit property but due to strong restraint she failed. She left the plaintiff's premises by putting another padlock over the padlock of the plaintiff of the suit flat and threatened that she would come again.
6. Immediately on 18th September 2012 the plaintiff through his constituted Attorney lodged complaint before police authority and on the following day filed an application under Section 144 (2) CrPC.
7. Pursuant to such application order was passed on 19th September 2012 by Learned Executive Magistrate directing to maintain peace and tranquillity at the locale and to see that there is no breach of peace.
8. The Order dated 19th September 2012 passed by the Learned Executive Magistrate was duly communicated to the Officer in Charge Park Street police Station on 21st September 2012. Upon



receiving the said order by the Park Street Police Station on 21st September 2012, one Sub Inspector of the Park Street Police Station namely Shri S.K Singh came to the plaintiff's suit premises on 21st September 2012, at about 2 P.M. and made an enquiry about the suit flat and also the complaint lodged by the plaintiff.

9. On 21st September at about 9.15 P.M. one sub-Inspector namely Shri P. Majumder of the Park Street Police Station suddenly came to the plaintiff's aforesaid premises along with defendant and her men and agents and forcefully put the defendant in the suit flat in violation of the order dated 19th September 2012 passed by the Learned Executive Magistrate in an application under Section 144 (2) of the Code of Criminal Procedure by breaking open the padlock and by taking the law in his own hand. From 9.15 p.m. on 21st September 2012 the defendant has trespassed the suit flat and is in illegal occupation of the suit flat of the plaintiff.
10. In view of the facts of trespassing the suit flat by the defendant, the plaintiff went to lodge a general diary to Park Street Police Station but the Officer-on duty of the Police Station, refused to do so on 21-09-2012 for which the plaintiff by another letter dated 22nd September 2012, made a written complaint to the Officer in charge Park Street Police Station to look after the matter.
11. After death of Mrs. C.D. Phillips in the month of March 2012 the plaintiff is in peaceful possession of the suit flat but the defendant



forcefully with the help of her associates and also with the help of one sub-Inspector of Police, Park Street Police Station namely Shri P. Majumder entered into the suit flat on 21st September 2012 unauthorisedly illegally and also by way of trespassing the suit flat. Thus the plaintiff is entitled to get a decree for eviction recovery of Khas Possession damages and other reliefs under the law against the defendant.

Pursuant to filing of the suit Summons was issued upon the defendant and as the summons could not be served through the bailiff it was served through speed post and returned with the remark 'Not claimed'. By order dated June 27, 2023, the suit was treated to be an undefended suit.

The plaintiff in the instant case has examined two witnesses. P.W. 1 Meraj Rashid is the plaintiff himself.

P.W. 1 in his Examination in Chief has stated from when he became the absolute owner of the suit property and how P.W.1 further stated that he received rent from Mrs. C.D. Phillips last on December 2010. P.W.1 also stated that Mrs. C.D. Phillips from February 2013, became ill and she was taken away from the suit premises by the missionary, and when she left the flat and went with the Christian missionary she handed over the flat to him putting padlock and surrendered her possession of the flat to P.W.1. in the month of March 2012. He stated that after handing over the possession of



the said flat in the month of March 2012 he kept the flat in his possession by putting padlock in the main gate and kept the same under his custody. Thereafter on 18th September 2012, the defendant Mrs. Alison came with few people and tried to take possession of the said flat and when she was stopped from entering the flat she went up by putting one padlock over the padlock of the plaintiff and threatened to come again to take possession of the suit flat. He also stated that the Metropolitan Magistrate 10th Court Calcutta by Order dated 19.09.2012 directed officer in charge Park Street police Station to see that peace and tranquillity is not disturbed and in the meantime no illegal act or obstruction is committed by the opposite parties at the dispute locale. P.W. 1 contended that on 21st September 2012 Sub-Inspector S.K. Singh of Park Street Police Station came to the premises and made an enquiry. On the same day after the enquiry was over at 9.15 p.m Ms. Alison with her associate persons and P. Majumder from Park Street Police Station came broke open the Padlock of P.W. 1 and made Ms. Alison illegally occupy the suit flat. On 22nd September a Complaint was made to the Deputy Commissioner of Police South Division but no steps were taken. Thereafter this suit was filed.

P.W. 2 Samriddha Sen is the Learned Special Officer appointed by Order dated 15th July 2024 to conduct an inspection. P.W. 2 identified the report submitted by him as well as his signature.



The plaintiff apart from adducing oral evidence have filed the following documents marked as exhibits.

- A. Copy of rent receipt of April 1982.
- B. Counter part of a rent receipt for the month of July 2010 to December 2010.
- C. Agreement between Mahesh Chunder and Sambhu Nath Chunder dated 12/13/1982.
- D. Agreement between Murari Mohan Chunder and Sambhu Nath Chunder dated 26/03/1982.
- E. Agreement between Haji Harun Rashid and Meraj Rashid dated 05/05/1998.
- F. Agreement between Habiba Khation and Meraj Rashid dated 05/05/1998.
- G. Counter part of the application for certified copy before 10th Metropolitan Magistrate Calcutta.
- H. Certified copy of the petition under Section 144(2) CrPC before Learned 10th Metropolitan Magistrate Calcutta along with all orders.
- I. Report of the Special Officer.

I/1. Signature of Special Officer in Exhibit I.

Heard Learned Advocate for the plaintiff. Perused the evidence adduced both oral and documentary. Upon hearing the Learned Advocate and upon perusing the evidence adduced it appears that the plaintiff in the



suit for eviction of the defendant has specifically stated in oral and documentary evidence as to how the plaintiff got ownership of the suit property. The plaintiff has further been able to establish that Mrs. C.D. Philips was tenant in respect of the suit property and she last paid rent to the plaintiff from July 2010 to December 2010. It is the case of the plaintiff that after death of Mrs. C.D. Phillips the Defendant Mrs. Alison took forcible possession of the suit property with the assistance of sub-Inspector P. Majumder of Park Street Police Station.

In order to institute suit for eviction of a trespasser the plaintiff has to show his ownership in the suit property which the plaintiff has been able to show. The plaintiff has specifically given necessary particulars in his evidence as to when and how the defendant took forcible possession of the suit property without any documents as to her right. Such evidence is uncontroverted. The oral evidence of the plaintiff is corroborated by the application made under Section 144(2) CrPC by mother of the plaintiff, before Learned 10th Metropolitan Magistrate and Executive Magistrate Calcutta.

Thus the plaintiff has been able to establish that the Defendant has trespassed in the suit property. Thus the plaintiff is entitled to a decree for eviction. This undefended suit succeeds.

Hence the plaintiff does get a decree for eviction against the defendant, her men agents and assigns from the suit flat as described in schedule 'A' to the plaint.



The Defendant is ordered to hand over peaceful and vacant possession within 30 days from the date of this Order.

As the defendant all along did not appear in the suit, and at the time of inspection of the suit property the door of the flat was found to be padlocked for which inventory could not be made it would be reasonable to appoint special officer to affix this order on the outer door of the suit property at a conspicuous place for perusal and compliance by the defendant. Apart from affixing this order at the outer door of the suit flat Learned Special Officers shall also communicate copy of this order to the defendant at the place where she carries on business and the place where she also resides as reflected in the cause title.

Thus Mr. Samriddha Sen Learned Advocate member Bar Library Club Ph-9830200966 and Mr. Dipnaryan Chakraborty Learned Advocate Ph- 9051506611, and 9007791273 are appointed as Joint Special Officers.

Learned Special Officers shall communicate this Order upon the defendant Mrs. Alison by affixing it at the outer door of the Suit Premises and a conspicuous place for perusal and compliance by the defendant. Learned Special Officers shall also communicate copy of this order upon the Defendant by speed post at 143/112 Picnic Garden Road, Left Side Flat Police Station Tiljala Kolkata-700039, and 1 Ho-Chi Minh Sarani 3rd Floor Metro Plaza being Shop room no-3003 named as 'AMANDA' Kolkata-700,071. The visit to suit premises for affixing copy of the order shall be upon notice to the Learned Advocate for the plaintiff. Copy of the plaint shall



be served upon Learned Special Officers. Learned Special Officers upon intimating the defendant the contents of the Order together with copy by speed post and by affixation at the Suit property shall submit a report along with postal receipts and track report.

The Learned Special Officers are entitled to a remuneration of 600 GM each to be paid by the plaintiff.

On completion of intimation to the defendant Learned Special Officers shall submit report on or before 29/08/2025. In the event the defendant does not vacate the suit premises within 30 days, the plaintiff will be entitled to apply for Execution of the Decree.

Fix 29/08/2025 for report of the Special Officers.

(Biswaroop Chowdhury, J.)