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

Present:
The Hon'ble Justice Sugato Majumdar

CS/256/2009
KARNANI PROPERTIES LIMITED
VS
KAILASH PRASAD JHUNJHUNWALA AND ANR.

For the Plaintiff	:	Mr. Ajay Krishna Chatterjee, Sr. Adv. Mr. Biswanath Chatterjee, Adv. Mr. Soham Krishna Chatterjee, Adv. Mr. Neelesh Chowdhury, Adv. Ms. Anuradha Poddar, Adv.
For the Defendants	:	Mr. Anindya Kumar Mitra, Sr. Adv. Mr. Sarvapriya Mukherjee, Adv. Mr. Arif Ali, Adv. Mr. Souradip Banerjee, Adv. Ms. Upama Bhattacharjee, Adv.
Hearing concluded on	:	10/02/2026
Judgment on	**:**	**18/03/2026**

Sugato Majumdar, J.:

The instant suit is filed by the Plaintiff praying for, *inter alia,* decree for permanent injunction, damages and ancillary reliefs.

Sum and substance of the plaint case may be summarized as follows:

i) The Plaintiff, being a company registered under the Companies' Act 1956, having registered office at 23/21, Gariahat Road, Kolkata-700029, was and still is the absolute owner of the premises no. 25B, Park Street, Kolkata-700016. The Plaintiff is also the absolute owner of other premises being premises no. 21, 23, 25A, 27A, 27B, 29, 31, 33, 35, 37, 39, 43, 45, 47, 55 and 57 Park Street, Kolkata-700016. The aforesaid premises are collectively owned as "Karnani Mansion". There is a compound situated inside Karnani Mansion and is part of it. The said premises are occupied by various tenants and/or occupants for residential as well as commercial purposes.

ii) The Defendant no. 1, namely, Mr. Kailash Prasad Jhunjhunwala was a monthly tenant in respect of a showroom in the ground floor of the premises no. 25B, Park Street, Kolkata-700016 comprising of an area of about 4400 sq. ft. The tenanted portion is particularly described in Annexure - A.

iii) The Defendant no. 2, namely, J. J. Automotive Pvt. Ltd. purports to be a dealer of Hyundai motors and carries on business in the name of "Bengal Hyundai". The Defendant no. 1, has illegally sub-let, assigned or otherwise parted with possession of the tenanted premises to the Defendant no. 2 without consent in writing of the Plaintiff who is the landlord.

iv) The Plaintiff, in terms of the letter dated 22/03/2006 terminated the tenancy of the Defendant no 1. The Defendants are in wrongful and illegal occupation and possession of the showroom at 25B, Park Street, Kolkata-700016 (hereinafter for the sake of brevity may be referred to as

2026:CHC-OS:93

"the showroom"). The Defendant no. 1 has defaulted in payment of rent in respect of the showroom since 01/07/1999.

v) The showroom has a front entrance from Mirza Ghalib Street which is used by the Defendants to park new Hyundai brand cars inside the showroom. The back entrance of the showroom leads to a compound which is part of Karnani Mansion. The Defendants have no right to or access to any part or portion of the compound. The Defendants' access to the showroom is from the front entrance of the showroom from Mirza Ghalib Street. At the back of the showroom, the Plaintiff, for the purpose of protecting its right in the compound, had constructed short iron bars and iron pillars so that there can be no unauthorized egress and ingress of cars from the back side of the showroom. The iron bars and iron pillars are the properties of the Plaintiff.

vi) The Plaintiff has exclusive right to possess and occupy the compound inside Karnani Mansion and the right to authorize any other tenants or occupiers of Karnani Mansion to use such compound for car parking or for any other purpose. For this reason and for the purpose of regulating car parking in the said compound the Plaintiff issued car stickers to be affixed to the cars which would be then allowed to park inside the compound. Car stickers are also issued for security purpose to prevent unauthorized parking. The Defendants do not have or cannot have any right in the aforementioned compound inside Karnani Mansion or any portion adjacent to the back portion of the showroom.

vii) On 02/09/2009, the Defendants and/or their agents and servants had wrongfully and illegally removed the iron pillars and iron bars and had cemented the area where the iron pillars and the bars stood. They started

2026:CHC-OS:93

parking several cars at the back side of the showroom and on the compound. The Defendants have been using wrongfully and illegally, a portion of the compound adjacent to the back side of the showroom for fitting and repairing the new cars before delivery to the respective customers.

viii) The Defendants have caused loss and damage to the Plaintiff by cutting and removing the iron pillars and bars standing on the back compound. The Plaintiff reasonably estimated such loss at Rs.1,00,000/-. The Defendants also acted wrongfully and illegally and without lawful authority in parking new cars and causing fittings to be made in the cars before delivery of the same from the compound adjacent to the back side of the showroom. The Defendants have also committed an act of criminal trespass thus. In doing such acts, as aforesaid, the Defendants have also committed act of nuisance on the said compound.

ix) According to the Plaintiff, he has suffered loss and damage which, the former, is unable to quantify presently.

The Plaintiff has, therefore, instituted the instant suit praying for decree of permanent injunction restraining the Defendants from parking cars inside the compound of Karnani Mansion; decree for permanent injunction restraining the Defendants their men, servants and agents from trespassing into the compound, causing nuisance by parking cars or fitting any car inside the compound, interfering with iron pillars; damages of Rs.1,00,000/- along with other remedies.

The suit was contested by the Defendants by filing written statement.

a) It is stated in the written statement that the compound in question is really a vast open area measuring not less than three

2026:CHC-OS:93

bigha of land surrounded by several buildings and brick walls. Only a portion of the compound admeasuring fifteen cottah has been encircled with brick built wall and separated from the remaining area of the compound by the Plaintiff. The remaining area of the compound measuring more than two bigha is lying open and is being used uninterruptedly by the tenants and occupants of Karnani Mansion not only for ingress and egress to their respective tenanted portions but also for parking vehicles. The area described as compound in the plaint lead into Park Street, on the one side and Mirza Ghalib Street, on the other side. After parking vehicles even vertically, a wide space of not less than seventy feet is left for ingress and egress of both vehicles and pedestrian traffic from Karnani Mansion into Park Street and Mirza Ghalib Street. The tenants of the residential flats of Karnani Mansion park their cars on one side of the said compound even at night. The Plaintiff's right to the said compound is subject to the easement of necessity of the tenants to use the same as pathway and parking vehicles.

b) M/s Auto Enterprise has been a tenant under the Plaintiff in respect of a showroom on the ground floor of the premises no. 25B, Park Street. This tenancy was governed by the West Bengal Premises Tenancy Act. This M/s Auto Enterprise is a partnership firm of which Kailash Prasad Jhunjhunwala and his son Anil Jhunjhunwala were partners. The Plaintiff had full knowledge, at the time of institution of the suit that M/s Auto Enterprises is a partnership firm. Being the senior partner, the said Kailash Prasad Jhunjhunwala is in control and possession

2026:CHC-OS:93

of the tenanted showroom as partner of the said partnership firm. The said tenanted showroom has a sixty four feet wide frontage on the western side of the compound which is adjunct to the air conditioned tenanted showroom and is part and parcel of the tenancy and is essential for enjoyment of the tenancy right of the showroom. The name of Auto Enterprise is boldly inscribed on the tenanted portion abutting the compound. It is denied that there has been any illegal act, subletting or parting with possession of the premises. The Defendant no. 1, all along with his son, is in possession of the said premises.

c) It is further stated that tenancy of M/s Auto Enterprises was wrongly terminated. Grounds of termination are incorrect and misconceived. It is also denied that the said M/s Auto Enterprise defaulted in payment of rent. M/s Auto Enterprise offered rent and the Plaintiff refused to accept the same. Since the month of July 1999, M/s Auto Enterprise caused monthly rent to be deposited with the Rent Controller.

d) It is contended that M/s J. J. Automotive Ltd. and M/s Automotive Ltd. are under common management of the Defendant no. 1 and his son. The Defendant no. 2 is controlled and managed by the Defendant no. 1 and his son who are directors and in control of the majority shares of the Defendant no. 2. M/s Auto Enterprise is in possession of the premises. Vehicles are being parked on the open space adjunct to the western frontage and entrance to the showroom since 1956 to the knowledge of the Plaintiff.

2026:CHC-OS:93

e) It is next contended that front entrance on the Free School Street, now named as Mirza Ghalib Street is meant for egress and ingress of the Defendants' customers. The cars and vehicles enter into the showroom through the rear entrance. The front entrance abutting Mirza Ghalib Street pavement does not have any slop on the main road. Even otherwise movement of vehicles into the showroom from Mirza Ghalib Street would cause great inconvenience to the pedestrians using the footpath on the road. In the rear portion of the showroom, there is a gate leading to the compound which is more than sixteen feet wide and the same is used for ingress and egress of cars to and from Karnani Mansion. Auto Enterpirses always had access to the compound. This would be evident from the fact that the Plaintiff had addressed a letter as far back as on 28/04/1960 recording therein that it had no objection to vehicles being parked on the open space adjacent to the rear side of the showroom; it expressed objection on for washing and repairing cars and vehicles in the open space. This open space, at all material times, has been treated as part of tenancy of Auto Enterprises. This would be evident from old documents dated 29/11/1957. The Plaintiff always allowed outside vehicles to be parked in the open compound inside Karnani Mansion. The abutting rear open space, at all material time was part of tenancy of M/s Auto Enterprises, who has been using it continuously and uninterruptedly having in exclusive possession for a period more than twenty years, to the knowledge of the Plaintiff. Auto Enterprises had always parked cars and vehicles

2026:CHC-OS:93

in the compound. It is denied that entrance from Mirza Ghalib Street is used by the Defendants for entry and exists of new cars inside the showroom. It is also denied that the Defendant's only access to the showroom is from Mirza Ghalib Street.

f) It is contended in the written statement that the iron bars and pillars were illegally placed by the Plaintiff during night and these were cut off. Thereafter those were removed by the Plaintiff.

g) The Plaintiff started disturbing the tenancy of Auto Enterprises in the year 2006. On or about 01/10/2007, a circular was issued by the Plaintiff to the effect that the tenants who were desirous of parking vehicles within the compound of Karnani Mansion had to obtain car stickers. According to the Defendants, the Plaintiff had no such right after 45 years from the inception of tenancy to issue such circulars. The Plaintiff did not insist on Auto Enterprises taking such sticker for their vehicles. Furthermore the new vehicles do not have any registration number and go on changing every day. The tenants have continued to park their vehicles on one side of the compound abutting the buildings without stickers. According to the answering Defendants, right of tenancy cannot be curtailed by the landlord by way of belated issuance of a circular. The tenants particularly M/s Auto Enterprises have right to park vehicles inside the open area of the premises with or without sticker and such right is in exercise for more than 45 years for which these cannot be abridged or curtailed from 2007

2026:CHC-OS:93

onwards. The Plaintiff was not in a position to and/or was not entitled to enforce the circular dated 01/10/2007. Right of parking cars in front of the back entrance is essential for enjoyment of tenancy and is very much part of the tenancy which is in use for long. The Plaintiff has no exclusive right to possess or occupy the same. The Plaintiff by their conduct have granted M/s Auto Enterprises the right to park vehicles on the rear side frontage of the showroom since the inception of tenancy. The Plaintiff with full knowledge of use of the rear frontage of the showroom for parking vehicles by M/s Auto Enterprises have acquiesced in the same without objection for a period not less than 45 years prior to 2007. The Plaintiff, therefore, cannot derogate from the grant. Even after parking cars which are passenger cars, more than 70 feet wide space is left and movement of vehicles and pedestrian traffic are not disturbed.

h) The Plaintiff has embarked on harassing the Defendants to secure eviction in a manner not warranted or permissible under the law. In order to pressurize M/s Auto Enterprises, the Plaintiff issued letters to M/s Hyundai Motors India Ltd. raising false and incorrect allegations. A criminal proceeding was also instituted against M/s Hyundai Motors India Ltd. by the Plaintiff.

i) It is specifically denied that the Defendants have no right or access to any part or portion of the compound and that the Defendants have only access to the showroom through front

entrance. It is stated that the Plaintiff had addressed a letter as far back as on 28/04/1960 recording therein that it had no objection to vehicles being parked in open space adjacent to the rear side of the showroom and its objection was in respect of washing and repairing cars and vehicles in the open space. It is further specifically averred that the open space at all material time has been treated as a part of tenancy of M/s Auto Enterprises. This would be evident from documents dated 29/11/1957. The Plaintiff had always allowed the outside vehicles to be parked in the open compound inside Karnani Mansion. The abutting rear open space at all material times was treated as land appurtenant to the tenancy of M/s Auto Enterprises. M/s Auto Enterprises have been in continued, uninterrupted and exclusive possession of the abutting rear open space since inception of tenancy for a period more than 20 years to the knowledge of the Plaintiff.

j) The answering Defendants denied that the Plaintiff's purported estimate of cars is rupees one lakh. According to the answering Defendant, no damage has been suffered by the Plaintiff as alleged.

k) The answering Defendants denied all other allegation and accordingly pleaded that the suit should be dismissed.

On the basis of the rival pleadings, the following issues were framed:

1. *Is the suit maintainable?*

2. *Is the suit barred by laws of limitation?*

3. *Is the suit barred by principles of estoppel or acquiescence as alleged in paragraph 14 of written statement?*

4. *Was there any contract between the parties in respect of the alleged parking of cars in the compound at Karnani Mansion behind the showroom or any other place in the compound?*

5. *Whether the Defendant has any right in respect of the compound inside Karnani Mansion or any portion which is adjacent to the back portion of the showroom situated at 25B, park Street, Kolkata-700016 measuring an area of 4000 sq. ft. as pleaded in paragraph 7 of the plaint?*

6. *Whether the Plaintiff is entitled to damages by the Defendant to the tune of Rs.1 lakh including loss of value o iron pillars illegally removed by the Defendant and its men and agents as pleaded in paragraph 9 of the plaint?*

7. *.....(Deleted by Order dated 05/02/2018).*

8. *Has Auto Enterprise been in continuous uninterrupted and exclusive possession of the rear open space abutting the tenanted showroom since inception of tenancy granted in 1956 for a period of more than 20 years to the knowledge of the Plaintiff as alleged in paragraphs 4 and 5 of the written statement?*

9. *Has the Plaintiff by its conduct granted Auto Enterprises the right to park vehicles on the rear side frontage of the*

concerned showroom since inception of tenancy granted in 1956 as alleged in paragraph 5 of written statement?

10. *Are the Defendants wrongfully or illegally or without lawful authority parking new cars for fitting before delivery to the customer/purchasers on the area adjacent to the back side of the tenanted showroom at 25B, Park Street as alleged in paragraph 10 of the plaint?*

11. *Whether the Plaintiff is entitled to a Decree for permanent injunction against the Defendant nos. 1 and 2 as sought for?*

12. *To what other relief or reliefs, if any, is the Plaintiff entitled to in the facts and circumstances of the case?*

Argument for the Plaintiff

Mr. Chatterjee, the Learned Senior Counsel appearing for the Plaintiff, firstly argued that the Defendants have failed to produce any document, picture or correspondence showing that they had been using the courtyard since the inception of tenancy. The case of the Defendants is based solely on oral evidence which could not withstand grueling cross-examination by the Plaintiff. Each of the witnesses of the Defendants sought to establish that the Defendants have been using the courtyard since the inception of tenancy. But such evidence, tested by cross-examination stood demolished. Thus, according to Mr. Chatterjee, the Learned Senior Counsel, the Defendants have failed to substantiate and establish their case of long user of the compound.

Secondly, it was argued by Mr. Chatterjee that the photographs being Ext. 'N', 'O', 'P', 'R' and 'V' were not challenged or disproved by the Defendants by any

counter evidence. The only challenge to those photographs was that they were not taken by a professional photographer but by the Plaintiff's director. It was argued that these photographs traced the iron pillars which had been there but cut off and/or demolished on 2nd September, 2009, two days prior to filing of the suit. Demolition of iron bars and pillars as evidenced by the photographs exhibited, demolished the case of the Defendants that the courtyard was being used by the Defendant for more than 20 years continuously.

Thirdly, opposing the argument of easement right to use the courtyard, Mr. Chatterjee argued that provisions of Easement Act, 1882 is neither applicable to this State nor do support the Defendants' case/right. In accordance with Section 4 of the Easement Act, 1882, dominant and servient owners must be different person whereas in the instant case the Defendants being the tenant of the Plaintiff has been claiming easement right on the courtyard which also belong to the Plaintiff. Therefore, essential conditions of easement under Section 4 of the Act of 1882 fails to be applied. In substance, Mr. Chatterjee argued that the claim of easementary right in respect of the courtyard has no legal basis and could not be entertained.

Fourthly, Mr. Chatterjee argued that the Defendant set up a case that courtyard is part of tenancy within meaning of Section 2(f) of the West Bengal Premises Tenancy Act, 1997 which defines premises. The fact situation of this case shows that there had been demarcation of tenancy, namely, iron bars and pillars installed behind the showroom abutting to the courtyard which clearly demonstrate that because of iron bars and pillars the area of tenancy was demarcated and not extended to the courtyard. Mr. Chatterjee referred to Ext. 14 and 14 (1) being the Rent Control Challans under which the Defendant deposited rent with the Rent Controller; this document contains statement of tenancy which do not include the courtyard. This statement and the document was the Defendants' documents

themselves. These documentary evidences also demolish the case of the Defendants.

Fifthly, Mr. Chatterjee, Learned Senior Counsel, argued that the Defendants deliberately withheld the best evidence, namely, Hyundai Dealership Agreement which, if produced, would have indicated the extent of tenancy mentioned therein.

Mr. Chatterjee argued that, it is the case of the Defendant that motor car dealership business essentially demands a showroom along with a space reserved for delivery of cars and observance some rituals associated with delivery of new cars. But, according to Mr. Chatterjee, this argument should be rejected because the iron pillars were installed at the back of the showroom appertaining to the courtyard clearly indicating the extent of the boundary of the showroom. The Defendants chose to take the tenancy with such limitation as to its showroom area up to the iron bars and pillars. Therefore, the Defendants' argument does not hold legs.

Argument for the Defendant

Mr. Mitra the Learned Senior Counsel for the Defendant argued as follow:

Firstly that the showroom comprises of an area of 4400 square feet divided into four parts by four pillars. This is in the statement of PW-1. There are twelve feet wide openings (four ways) on the rear side of the showroom, abutting on the compound/courtyard and providing access to the compound. This is in the statement of DW-1 in question no. 32. The front portion of the showroom is abutting the footpath of Mirza Ghalib Street. There are three fixed glass windows (floor to ceiling and one, three and half feet wide door for entrance) to the showroom, as stated by DW-1. No vehicles can enter into the showroom through the front portion. The vehicles enter and exit the showroom only through the twelve feet wide opening at the rear. There is no slop on the footpath in front of the showroom to allow

vehicles to traverse the footpath for reaching the road, as stated by PW-1. Road clearance of cars is five inch on average. The footpath is nine and half inch high and the very busy public thoroughfare. Since inception of tenancy in 1956, vehicles moved into the showroom from the courtyard through the rear opening, as stated by DW-1. When the Defendants decided to install air-conditioning machines in the showroom, they have blocked three openings for the purpose of air conditioning and have kept one opening with a collapsible gate being twelve feet wide for movement of vehicles and access to and from the compound. This is also stated by DW-1.

From the inception of tenancy, in the year 1956, the compound has been used to carry on business as dealer of vehicles of various categories. Vehicles are displayed in the showroom and delivered to the customers through twelve feet wide rear end opening. The Defendant did use the compound for the said purpose for a continuous period of more than fifty years to the knowledge and without objection of the Plaintiff.

Vehicles are delivered to the customers explaining their basic functions and conducting short rituals with family members of the customers taking about 30 to 45 minutes. During this short period, vehicles are temporarily stationed on a portion of the courtyard adjacent to the showroom, as stated by DW-4. This is not really a parking. This is a short pause in course of delivery of cars to the customers.

It was argued that there was implied grant of such right by the Plaintiff to the Defendant for fifty years from which the Plaintiff cannot derogate. It is further argued that the right is also incidental and/or appurtenant to and part of the tenancy of the showroom. Furthermore, as argued, the right is also necessary for the enjoyment of tenancy right of the showroom for the purpose for which it was taken.

Mr. Mitra, the Learned Senior Counsel, argued referring to the definition of premises in both Section 2(f) of the West Bengal Premises and Tenancy Act, 1956 and Section 2(e) of the West Bengal Premises and Tenancy Act, 1997 that the words "appertaining thereto or appertaining to" figured in both the provisions signify relation to or to be appropriate to. In this case, the compound/courtyard is related to the showroom which is admitted in the plaint. The compound is also appropriate for enjoyment of tenancy of the showroom for which tenancy was taken.

Mr. Mitra, the Learned Senior Counsel also argued on the point of easement of necessity. It was argued that right of user of the portion of the compound adjunct to the rear side of the showroom, can be claimed by the tenants as the easement of necessity. The Learned Senior Counsel referred to **Wong Vs. Beaumont Property Trust Ltd. [(1965) 1 QB 173], Jeenab Ali Vs. Allabuddin [1896-97 (1) CWN 151]** and **Kartic Manjhi & Anr. Vs. Banamali Mukherji & Ors. [AIR 1930 Patna 7].**

It was argued that easement of necessity is somewhat synonymous to the tenant's inherent right to such user of the landlord's property as would be necessary for proper enjoyment of tenancy for the purpose for which the tenancy was taken. A necessity depends on the nature of tenancy. In this case, the vehicles could not be taken in or out of the showroom except without using this part. Therefore, according to Learned Senior Counsel, an easementary right was created. It was further argued that the tenancy right of easement by prescription is different from and do not stand in the way of landlord granting a particular right to the tenant. This grant of right to the tenant is presumed when there has been un-interacted use of right by the tenant for a long period to the knowledge of the landlord. The Learned Senior Counsel referred to **Kailas Chandra Nag & Ors. Vs. Bijay Chandra Nag & Ors. [AIR 1923 Cal 18].**

2026:CHC-OS:93

The second limb of argument is that the suit is filed to get the showroom vacated without obtaining any decree of eviction. It was contended that notice under Section 6(iv) of the West Bengal Premises Tenancy Act, 1997 was issued on 22nd March, 2006 but no ejectment suit was filed in succeeding four years. The instant suit is an indirect way forcing the Defendants to vacate the premises. Even the Plaintiff went to the extent of filing criminal contempt against the Directors of Hyundai Motors Ltd. and Mr. Anil Jhunjhunwala (one of the partners of Defendant no. 1 and one of the Directors of the Defendant no. 2). Criminal contempt was quashed against the Director of Hyundai which dissuaded/discouraged the Plaintiff to pursue to criminal contempt. After dismissal of the criminal contempt, the Plaintiff took resort to the instant suit as a means of eviction.

It is further argued that on 2nd September, 2009, the Plaintiff surreptitiously caused several iron pillars to be placed right outside the rear side opening of the showroom and the Managing Director of the Plaintiff himself took photographs of the iron pillars with these cameras. Thereafter, those pillars were removed in the morning. On 4th September, 2009, the instant suit was filed.

To substantiate the argument that it is settled law that long user gives rise to and matures into grant of absolute an indefeasible right of such user, Mr. Mitra, the Learned Senior Counsel referred to **Maharani Rajroop Koer Vs. Syed Abul Hossein [(1879-80) 7 IA (Indian Appeals) 240]; Kunjammal Vs. Rathnam Pillai [AIR 1922 Mad 5]; Kasi Nath Bhattacharjee & Ors. Vs. Murai Chandra Pal [AIR 1920 Cal 361); Manmatha Nath Vs. Rakhal Chandra Mandal & Ors. (AIR 1933 CAL 215); Umade Rajaha Raje Vs. Ardhamala Yagadu & Ors. (AIR 1937 Mad 953).**

Mr. Mitra, the Learned Senior Counsel further argued that right to use the compound is an incidental to a part of the showroom. Mr. Mitra referred to Section

2 (f) and 2 (e) of the West Bengal Premises Tenancy Act, 1956 and 1997 respectively. Further argued that DW-1 in course of examination-in-chief stated that it was understood that the right was part of tenancy which remain unchallenged in cross-examination.

To substantiate the argument that use of the compound is easement of necessity. Mr. Mitra referred to **Wong Vs. Beaumont Property Trust Ltd. [(1965) 1 QB 173]; Halsbury 4th Edition, Volume No. 14, Paragraph 65.**

B. It was submitted that the tenancy agreement is not exhaustive of all the terms and conditions. There is no whisper in the plaint that the agreement contained all the terms of tenancy. It was understood that the Defendants would use the compound as incidental to the Tenancy. Mr. Mitra referred to **Shivaji Balaram Haibatti Vs. Avinash Maruthi Pawar [(2018) 11 SCC 652].** According to Mr. Mitra, Section 91 and 92 of the Evidence Act, 1872 are not applicable. Mr. Mitra also referred to **The Godhra Electricity Co. Ltd. & Ors. Vs. The State of Gujarat & Ors. (AIR 1975 SC 32), Balaram Agasti & Ors. Vs. Ramesh Chandra Mohanty (AIR 1973 Orissa 13)** and **Des Raj Vs. Kulwant Singh & Ors. [(2003) 135 PLR 601]** were relied upon.

It was further argued that PW-1 is not a competent witness to depose on the tenancy agreement executed on 24/08/1956 as PW-1 was too young when the document was executed. On the other hand, PW-1 has personal knowledge since the inception of tenancy. It was further argued that pillars were installed by the Plaintiffs to make up a case of his own and to concoct a story. It is in the evidence of PW-1 that iron pillars are absent behind the showroom/restaurants adjacent to the Defendant showroom.

It nutshell, it was argued that the suit is not maintainable and should be dismissed also on merit.

It was not in dispute that the Defendant No. 1 was the tenant in respect of an area comprising of 4400 sq. ft. at the ground floor of premises no. 25B, Park Street, Kolkata-700016. The tenancy was determined in terms of letter dated 22/03/2006. Tenancy agreement bears date of 24th August, 1956. It was initially for a period of 11 months. The tenancy was for showroom as mentioned in the tenancy agreement. There were no further particulars on nature of user in the tenancy agreement. It was mentioned in the agreement that the purpose of tenancy was "showroom having 4 ways". The agreement is Ext.A. The tenancy agreement did not contain any bar on use of the courtyard. The Ext. S is a letter dated 28/04/1960 which states that M/s Auto Enterprise was prohibited from carrying on washing, cleaning and repairing works of motor cars or to use the said courtyard in any manner whatsoever except for the purpose for which it was meant. The letter also reveals that motor cars were washed, cleaned and repaired in the open courtyard of the mansion. Though it is in the form of a complain yet it indicted that multiple motor cars were cleaned, washed and repaired in the open courtyard. It was prohibited because by such acts, the courtyard became very dirty and filthy resulting much difficulty and inconvenience to the other tenants for their passing. Nothing is there in the letter which totally prohibits using of the compound, but to use the same for which it was meant.

It was not in dispute that the suit premises were meant to be used for showroom for car. It was mentioned in agreement that the showroom had 4 ways entry. In course of argument, it came out that when air conditioners were installed in the showroom front gates were closed except one for the purpose of entrance. The photographs which are Exhibit Nos. 'N', 'O', 'P', 'Q" & 'R' as well as 'V' are adduced in evidence.

2026:CHC-OS:93

Apart from tenancy agreement, there is no other agreement to show that the compound was not allowed to be used by the Defendants in connection with their automobile business.

The compound in question is big enough. Suggestion was given (question no.340) that the area comprises of three bighas of land which the PW-1 did not disagree. PW-1 could not tell precisely the area. This compound was not subject matter of tenancy of the Defendants; it was stated that only the showroom, was let out to the Defendant No. 1. It was also stated by him (question no. 33 and 34) the compound was being used by the tenants of all the buildings which are situated there. Answering on nature of use, PW-1 stated that the tenants use to come there in their vehicles, some of whom are given car stickers used to park their cars. PW-1 further explained that cars stickers were issued to prevent parking inside the compound by the outsiders. PW-1 stated in course of cross-examination (question no.250) that parking charges were levied on the outsider for parking of the cars when PW-1 was confronted with the question as to whether the Defendant cannot apply for car stickers for their cars displayed in the showroom for sale, the answer was, they are supposed to park their cars in the compound (question no.260). In answering another question in course of cross examination (question no.266), PW-1 stated that prior to 2008-2009, the flat occupants and shop owners had been parking their cars inside the compound inspite of restrictions. It is even admitted in course of cross-examination (question no.299) that one Gujral Distributor had five flats and have their 15 to 20 cars are parked there. It is also in evidence of PW-1 that car stickers were issued to the tenants for parking. The tenants and occupants having car stickers were allowed to park their cars.

The evidence of PW-1 showed that the compound is used by the tenants and occupiers for parking vehicles against stickers. This was even corroborated by DW-1

2026:CHC-OS:93

when he stated that all tenants used the courtyard for parking vehicles, brining materials on trucks. All these companies bring goods by trucks which are parked in the compound and loaded and unloaded thereafter.

PW-1 stated that there were restrictions on parking vehicles inside the compound, yet the tenants park their vehicles on the compound. Evidence does not disclose what types of restrictions had been placed by the Plaintiff, and what steps had been taken against such parking inspite of restrictions.

Evidence of PW-1, got corroborated by DW-1 when he stated that the compound/courtyard is being used by all the tenants for parking vehicles for, bringing materials by truck which are loaded and unloaded therein.

Whether there exist any easementary right or a person is bestowed with the benefit of lost grant is a mixed question of law and fact. It is a case where a courtyard is being used by multiple tenants who are residing therein. It would not be wrong to conclude that all the tenants use the compound or courtyard as incidental to tenancies for the purpose of parking vehicles.

The next question which is the bone of contention and primary dispute between the parties is whether the Defendants park their vehicles at the rear side of the showroom being part of the compound from the inception of the tenancy.

The agreement of tenancy dated 24/08/1956 (Ext.A) is silent on the issue of the compound. This agreement was for 11 months commencing from 1st September, 1956. Purpose of the tenancy was opening a showroom having “4 ways”. As observed above there was no negative term in the agreement restricting the user of the compound. Ext.S is a letter dated 28/04/1960 addressed to M/s Auto Enterprise written by on behalf of Karnani Properties Limited. In terms of this letter, M/s Auto Enterprise was asked to stop washing, cleaning or repairing works of motor cars or to

2026:CHC-OS:93

use the said courtyard, in any manner, whatsoever except for the purpose for which it was mend. This was replied, showing a note of compliance but this letter shows that the compound, although not covered by the tenancy agreement was subject matter of use for a specific purpose. The purpose is not explained. PW-1 (in answer to question no.150) explained that the car used to enter into compound for dropping down and picking up persons and for that purpose only cars were allowed and the compound was used. In answer to question no.151, it was explained that the purpose was only for dropping and picking occupants and tenants in the premises.

It was pleaded in the plaint that the Defendants have no right to or access to any part or portion of the compound. It was further pleaded that at the back of the showroom the Plaintiff, for the purpose of protecting its rights in respect of the compound constructed short iron pillars and bars, so that there can be no unauthorized ingress and egress of cars from the back side of the showroom. The plaint is silent as to when these iron bars and pillars had been installed. But it was averred in the plaint that the iron pillars had been wrongfully removed by the Defendants on 02/09/2009. After removal of such iron pillars, that Defendants cemented the area where the iron pillars had been installed and started parking several cars. It was also pleaded that the Defendants have also using the some portion for fitting and repairing the new cars before delivery to the customers.

The fact that the Defendants have been using the compound his evident from Ext.S and statements of PW-1 (question no.151). Secondly, PW-1 in course of cross-examination admitted that he has not witnessed any delivery of car from the front side of the showroom (question no.520). Ext.F is a letter dated 20th July, 2006 written by the Plaintiff addressed to the Hyundai Motors India Limited. It was alleged that the Defendants have been *suo motu* parking cars inside the premises. Complaint case 1669 of 2007 (Ext.4) was filed by the Plaintiff in the Court of

Metropolitan Magistrate against the Hyundai Motors & others including Mr. Anil Jhunjhunwala where also parking of vehicles by the Defendants are admitted. A Police Report (Ext.15) was filed in prosecution pending before the executive and Metropolitan Magistrate, 10th Court, Calcutta (M250/07) which was filed by M/s Auto Enterprise against Mr. Chandra Kumar Karnani under Section 144(2) of CRPC. This police report bears the date 01/05/2007. This report stated that there was entry of four wheelers into the showroom through the compound situated at the west side of the showroom for which Mr. Karnani raised objection and dispute cropped up. PW-1 (question no.481) stated that the delivery of cars could not be made through the back side because of presence of iron pillars. It should be noted that according to the plaints cars were parked at the rear side of the showroom, after removal of the iron pillars and bars. Iron pillars had been removed on 02/09/2009. But Ext.4, Ext.15 and Ext.F showed that cars were parked illegally at the rear side of the showroom. Apart from the question of legality or illegality, it was admitted that there had been parking of cars in the year 2007 when there documents were created. Both the plaint case and oral testimony of the PW-1 stand demolished by these evidences.

DW-3 was the customer of the Defendant stated that he took delivery of the car on behalf of the father (question no.4) on 10th March, 2004 at about 05:00 p.m. This delivery was taken at the backyard and the vehicle was delivered at the back door. He stated that the front portion of the showroom has only one door while the rest were covered. In course of cross-examination, he reiterated that delivery was taken from the back side. DW-2 stated in evidence that he purchased the car in the month of December 2008 worked inside the premises through the front gate where there is a small door only and took delivery of the car on the back side. Both the witnesses were subjected to cross-examination. Testimony of DW-2 and DW-3 confirmed that the rear part was in use by the Defendants much before alleged

2026:CHC-OS:93

removal of iron pillars on 02/09/2009. In fact compound was in used by the Defendants as early as in the year 1960. There is no evidence that at any point of time from the inception of tenancy till 02/09/2009 the Defendants had been restrained to use the compound though use of the compound was complained with and objected to as appears from Ext.F, Ext.4 and Ext. 15, as discussed above. In these conspectus of facts, existence of the iron pillars cannot be said to be from the very inception of the tenancy. In fact this court is of view, in the conspectus of the factual scenario, that the iron pillars were placed to prevent the Defendants from using the courtyard, which they have been using since the inception of tenancy.

In the conspectus of facts so discussed and evidence were appreciated, it is apt to consider the issues.

Issue no. 1 is the maintainability of the suit and Issue no. 2 is one of limitation.

From evidence it is established that the compound in question is being used by all the tenants for parking vehicles. The said compound is the common user by the tenants and the said use is incidental to tenancy. On determination of tenancy, the Defendants are statutory tenant, not illegal occupier. As observed above, user of the compound is incidental to tenancy. In this respect of the suit is not time barred.

On the basis of oral and documentary evidence, it was concluded that the courtyard was meant for common use. Apart from Ext.S there is no document to show that at any point of time the Defendants were restrained from using the compound in any manner since the inception of tenancy. The photographs (Ext. N-R) show that there is an entrance at the front portion but no car can be taken out crossing the footpath at the front end. PW-1 himself admitted that he has not seen any vehicle to be delivered through the front gate. It was also in evidence of PW-1

2026:CHC-OS:93

(question no.221-227) that there is no iron pillar at the rear side of the adjacent restaurants.

Mr. Mitra, the Learned Senior Counsel appearing for the Defendants argued that it is a case of lost grant. Various authorities were referred to in support of the contentions. The decisions were taken in those judgments in factual backgrounds, specific to those cases. The Learned Senior Counsel on behalf of the Plaintiff, on the other hand, argued, relying on various authorities, that on facts and circumstances of the case, there is no easement of necessity since one cannot claim easement against itself, dominant and servient and servient tenaments being different.

It is once again reiterated that all the decisions were made in specific facts and circumstances. Ext.S showed that the courtyard was in use by the Defendants even in the year 1960. Nothing is there on record to show that subsequent to that the Defendants were restrained or stopped using the courtyard thereafter. As discussed above, the plaint case that the Defendants started using the courtyard for parking vehicles since 02/09/2009 stands demolished by oral and documentary evidence. Even in the year 2007 use of the courtyard by the Defendants are on record and in evidence. Mr. Chatterjee, the Learned Senior Counsel for the Plaintiff argued also that non-disclosure of the dealership agreement between the Defendant and M/s Hyundai Motors Ltd. was deliberate since nature and extent of right of the Defendants on the compound must have been disclosed therein. Non-disclosure of that dealership agreement invites adverse presumption against the Defendant. But this agreement has its own shortcomings. Right in respect of the compound by the Defendants, whatever may that be, is a matter between the landlord and tenant. Existence or extent of such right cannot be found out from an agreement with a stranger. That dealership agreement has nothing to do with the present disputes

which are disputes between a landlord and tenant. Therefore, it is concluded that the Defendants have been using the courtyard since the inception of tenancy.

Issue Nos. 4, 5, 6, 7, 8, 9 & 10 are decided accordingly.

Issue nos. 1, 11 and 12 are clubbed together.

As discussed above and as concluded, the Defendants have been using the courtyard since inception of tenancy and the user is incidental to the tenancy. In fact the very mature of the business demands use of the rear portion courtyard for delivery of cars. The tenancy is a statutory one, on determination, and is subject to outcome of the ejectment suit. The Defendants cannot be restrained from using of the courtyard. The reliefs prayed for cannot be granted, therefore.

The Issue Nos. 1, 11 and 12 are decided against the Plaintiff.

In nutshell, the instant suit fails.

It is, therefore, ordered that the instant suit be dismissed on merit without any cost.

The decree may be drawn up.

(Sugato Majumdar, J.)