

3.
sg

06-12-2021

SMAT 8 of 2018
CAN 1 of 2018 (old CAN 5415 of 2018)

Ct. 8

Alka Devi Khaitan
Versus
Hariram Jagodia & Ors.

(Through Video Conference)

Mr. Pratyush Patwari, Adv.

...for the appellant

Mr. Anit Kr. Rakhit, Sr. Adv.

Mr. Riju Dutta, Adv.

...for the respondents

This is an example of how a decree-holder suffers in the hands of unscrupulous litigants by taking resort to provisions which were intended to benefit the rightful claims.

The appellant is a married daughter of the deceased. A suit for eviction was instituted against the deceased tenant on the ground of default, act contrary to clause (m)(o)(p) of Sec 108 of T.P. Act and subletting. The suit was decreed ex parte on 3rd June, 2014. The suit was originally instituted in the year 1993 and subsequently, renumbered as EJ 450 of 2003. The ex parte decree was challenged by the sons of the deceased tenant. The application under Order IX Rule 13 of the Code of Civil Procedure was dismissed. No appeal was preferred against the said decree by the legal heirs of the deceased including the present petitioners. After the decree has attained finality and was put to execution, to throw a spanner in the will, the married daughter had come out with an application that she was residing with her father and the suit was abated against her since she was not substituted.

The said application was dismissed on merit by the learned Trial Judge relying upon the Section 2(h) of the West Bengal Premises Tenancy Act, 1997, which clearly denies any right to her. There was no evidence to show that she used to reside with her father at the time of his death. But curiously she did not feel it necessary to file any application contemporaneously under Order IX Rule 13 of the Code of Civil Procedure or to join his brothers at the relevant point of time. Moreover, it is settled law that upon the death of the original tenant, if some of the heirs remained silent and never claimed any tenancy right in respect of those legal heirs, tenancy stands impliedly surrendered or relinquished. (*See Sumilita Bhattacharya and Anr. vs. Nila Chatterjee, reported in 1989(2) CLJ 351 and Pushpa Rani & Ors. vs. Bhagwanti Devi & Anr. reported in AIR 1994 SC 774*).

There cannot be any doubt that going by the definition of Section 2(h) of the West Bengal Premises Tenancy Act, 1997, she had no right to claim tenancy. Even if it is assumed that she had any right, that right stood extinguished after a period of five years from the date of death of such tenant. There is nothing on record to show that she was residing with the father at the relevant time or she was dependent on her father.

On such consideration, we do not find any merit to admit the second appeal. It is completely a frivolous application and filed with a view to circumvent the orders existing in favour of the decree-holder. The respondent/decreed-holder was denying the fruit of decree since 13th June, 2014. No point of law, far less no substantial question of law is involved in the second appeal.

In view thereof, this second appeal is not admitted and

dismissed with costs of Rs.50,000/-. The costs shall be paid to the decree-holder within one week from date.

The learned Trial Court shall proceed with the execution case as expeditiously as possible.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)