

26.08.2021
Srimanta
Sl. No. 15
Ct. No. 18

CO/3623/2019
[Via Video Conference]

Sri Snehasish Sengupta
-Vs.-
Smt. Sandhya Ghosh

Mr. Budhaditya Mukherjee, Adv. ...for petitioner.
Mr. Taraknath Halder, Adv. ...for the opposite party.

The present revisional application under Article 227 of the Constitution of India is at the instance of the defendant in a suit for eviction and is directed against the order dated July 24, 2019 passed by the Second Court, Learned Civil Judge (Junior Division), Sealdah in the said suit being Ejectment Suit No. 109 of 2011.

The Learned Trial Judge by the order impugned has allowed two applications filed by the plaintiff/opposite party; one seeking amendment of the plaint and the other for expunging the name of the deceased defendant no. 2 from the cause-title of the plaint.

The eviction suit was filed against all the heirs of the original tenant. The widow of the original tenant was the defendant no. 1 of the suit, on death her name was expunged from the records.

On the death of the defendant no. 2, the plaintiff/opposite party filed an application for expunging his name also from the records on the ground that the only heir and legal representative of the said defendant no. 2, i.e. his brother is already on record being defendant no. 3.

The plaintiff filed another application under Order VI Rule 17 of the Code of Civil Procedure

praying amendment of the plaint to incorporate the averment that the tenancy of the surviving defendant has ceased to exist by the operation of Section 2(g) of the West Bengal Premises Tenancy Act, 1997.

Learned advocate for the petitioner submits that the plaintiff since has accepted the defendant as his tenant and proceeding with the eviction suit as such is not entitled to claim that the defendant is no longer a tenant under her.

Learned advocate for the plaintiff/opposite party on the other hand submits that the time stipulated to come within the definition of the 'tenant' under Section 2(g) of the West Bengal Premises Tenancy Act, 1997 has admittedly expired, therefore, the surviving defendant cannot claim the protection of a tenant under the said rent control legislation.

Heard learned advocate for the parties, perused the materials on record.

The name of the defendant no. 2 has been expunged from the cause title of the suit at the risk of the plaintiff. The sole surviving defendant cannot have any grievance against such stand of the plaintiff.

Whether the plaintiff ultimately be able to prove the case sought to be incorporated by way of amendment is not a relevant consideration while dealing with an application under Order VI Rule 17 of the Code.

This Court, therefore, does not find any illegality and/or infirmity in the order impugned warranting interference.

C.O. 3623 of 2019 is dismissed without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Biswajit Basu, J.)