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24.03.2022
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

CO No. 863 of 2018

**Sri Bijoy Girii
-versus-
Smt. Kamala Choudhury**

Mr. Sayan Chattopadhyay,
Mr. Soumen Banerjee,
Ms. Soumi Bhattacharya,
... for the petitioner.

Mr. Tarak Nath Halder,
... for the opposite party.

The revisional application although is appearing in the list under the heading "To Be Mentioned" but by consent of the parties, it is taken up for final disposal.

The petitioner is the defendant of the Ejectment Suit No. 100 of 2015 pending before the 2nd Court of learned Civil Judge (Junior Division) at Sealdah, District : 24 Parganas (South).

The petitioner in the said suit filed an application under Order VII Rule 10 of the Code of Civil Procedure praying return of the plaint of the said suit on the ground that the suit property is comprised in Thika Tenancy and he is the Bharatia in respect of such property as such, the suit for eviction of him from the suit property is not maintainable before a civil Court, only the Thika Controller has the jurisdiction to entertain the said suit.

The learned Trial Judge by the order impugned being order dated November 07, 2017 has dismissed

the said application holding that the issue sought to be canvassed in the said application cannot be decided at this stage of the suit.

Section 8(3) of the said West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 mandates that any case of eviction of Bharatia shall be disposed of by the Controller in such a manner as may be prescribed and Section 21 thereof creates a bar to the jurisdiction of the Civil Court to decide or deal with any question which is required to be decided or dealt with by the Thika Controller.

Therefore, the learned Trial Judge has committed a jurisdictional error in not allowing the application filed by the petitioner for return of the plaint of the said suit.

The order impugned, for the aforesaid reason, is set aside. The application filed by the petitioner under Order VII Rule 10 of the Code is allowed.

The plaint of the Title Suit No. 100 of 2015 be returned to the plaintiff to be presented before the appropriate forum having jurisdiction.

CO 863 of 2018 is disposed of with the above terms without any order as to costs.

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

(Biswajit Basu, J.)