

18-02-2022
Ct. 21
D/L 18
ab

C.O. 983 of 2021
(Via Video Conference)

Smt. Malabika Saha
-Vs-
Sri Rajender Prasad Keshri @ Rajendra Keshri .

Mr. Amal Krishna Saha,
Mr. Debnath Mahata,
Mr. Souvik Sarkar

... for the petitioner

The present application under Article 227 of the constitution of India, is at the instance of the defendant who is facing an eviction from the disputed tenanted shop room being aggrieved by order dated 15.3.2021, passed by learned Civil Judge (Junior Division) Additional Court, Asansol in T.S 266 of 2018 and in connection of her application under section 7(2) of the West Bengal Premises Tenancy Act, 1997 whereby the Court held the petitioner to be a tenant under the plaintiff Rajendra Prasad Keshri, the present opposite party and defaulter in payment of rent from September 2015.

It has come on record the petitioner was inducted as a tenant in the disputed shop room by Mohinder Keshri, his brother Joginder and their uncle Jamuna

Prasad by executing an agreement on 12.11.2010 and on receiving advance of Rs.8,30,000/-only from the petitioner.

It has also come on record that Mohinder Keshri claiming himself to be the sole legal heir nephew of Jamuna, the alleged actual owner of the disputed shop room has transferred the same to the present O.P. for Rs.3,00,000/-only by executing a sale deed on 21.4.2014 and when the market value of the same was Rs.6,52,800/-.

A question arise in the mind of this Court if Jamuna Keshri was the absolute owner of the disputed shop room, then it is not known how Mohinder and his brother Joginder could execute the tenancy agreement along with Jamuna in favour of the petitioner in 2010 .

It has also come on record that petitioner was inducted as a tenant on payment of advance of Rs.8,30,000/- in the year 2010 and where as the property seems to have sold to the opposite party only for Rs.3,00,000/- in the year 2014 and that more than 50% less than market value.

It has also come on record Mohinder Keshri continued to accept rent tendered by the plaintiff through money order till August 2015 even after disposal of the property in favour of the O.P on 21.4.2014 and he took trouble to inform the petitioner about the transfer of the suit property to the present

O.P by sending letter of attornment on 10.8.2015 and not immediate after the transfer.

It has also seen from the impugned order the petitioner in spite of having received letter of attornment continued to pay the rent to Mohinder Keshri and who most illegally appears to have accepted the same.

It has also come on record the present O.P. has filed a Title Suit No.23 of 2015 against the present petitioner in respect of the suit property for declaration of title. Filing suit for declaration of title by the present O.P prima facie shows that there exist no relationship of landlord and tenant between him and the present petitioner.

Keeping in view the facts discussed above this Court is of view the learned Court below should have stayed present Title Suit No.266 of 2018 till the disposal of earlier filed suit no.23 of 2015 between the same parties in respect of the same subject matter in view of section 10 of C.P.C. Whereas by filing the present subsequent suit the O.P has taken a contrary stand claiming himself to be landlord and the present petitioner a tenant under Tenancy Act in respect of the suit shop room. Thereby it appears he has completely changed the status of the parties and which learned Court below has failed to take into consideration.

This Court is of view while dealing with Title Suit No.23 of 2015 the Court below is directed to take into

note or consideration about the advance of Rs.8,30,000/- paid by the petitioner to the vendor of the petitioner, the under value of the sale deed of the O.P and acceptance of rent by the vendor of the O.P even after the execution of alleged sale and delay in sending the letter of attornment more than one year after the alleged sale. The fact the tenancy agreement with petitioner was executed by Jamuna, Mohinder and Joginder in the year 2010 and while sale deed only by Mohinder claiming himself to be the sole legal heir of Jamuna being his only nephew. While tenancy agreement shows Mohinder and Joginder are two full blood brothers and thereby Mohinder was not the only nephew of Jamuna. Therefore, a doubt arise in the mind of this court about the genuineness of the deed of the O.P. Though above subject is not under challenge before this Court but while considering the legality of the impugned order this Court find necessary to discuss the above facts and bring those facts on record for proper administration of justice and to ascertain the actual truth and which the court below has failed to consider while passing the impugned order.

In view of the discussion made above and for proper administration of justice as well as for proper determination of dispute between the parties the order impugned not only set aside but also Title Suit No.266

of 2018 from where the impugned order arises is stayed till the disposal of Title Suit No.23 of 2015.

Accordingly **C.O. 983 of 2021 is allowed.**

Interim order, if any, stands discharged.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities

(**Kesang Doma Bhutia, J.**)