

20.06.2022
(D/L-14)
Ct.-18
(Susanta)

C.O. 1020 of 2015
Ajit Kumar Saha
-Vs-
Sri Hari Snakar Saha & Ors.

Mr. Dhiraj Trivedi,
Mr. Bikash Kumar Singh,
.... For the Petitioner.

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
... For the Opposite Parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for ejectment and is directed against the order no. 20 dated February 19, 2015 passed by the learned Judge 4th Bench Presidency Small Causes Court at Calcutta in the said suit being Ejectment Suit No. 515 of 2012.

The opposite party nos. 2 to 4 filed an application under Order 1 Rule 10(2) of the Code of Civil Procedure praying for their addition in the said ejectment suit as defendants.

In the said application it was alleged that the defendant of the said ejectment suit was not heard of for seven years as such the civil death of the said defendant shall be presumed consequently the applicants of the said application being the widow and sons of the said defendant are entitled to be added to the suit as defendants.

The learned Trial Judge by the order impugned has allowed the said application holding that the opposite party nos. 2 to 4 being the heirs of the original defendant/tenant are entitled to defend the said ejectment suit.

The heirs and legal representatives of the original tenant are claiming that their predecessor-in-title has not been heard for seven years by those who would naturally have heard of him if he had been alive, there is nothing on record contrary to the said claim of the opposite parties as such the learned Trial Judge has not committed any error in presuming civil death of the original tenant/defendant under Section 108 of the Evidence Act, 1872.

However, the suit being a suit under Section 6 of the West Bengal Premises Tenancy Act, 1997 in view of the definition of tenant under Section 2(g) thereof the sons of the original defendant the opposite party nos. 3 and 4 are not entitled to be added in the said suit as defendants.

The order impugned allowing addition of the said opposite party nos. 3 and 4 in the said suit is therefore set aside.

The opposite party no. 2 shall be entitled to contest the said suit from the stage it has already reached.

The order impugned is modified to the extent indicated above.

In view of the nature of the suit the learned Trial Judge is requested to expedite the disposal of it and in doing so shall not entertain the prayer of the parties for any unnecessary adjournment.

C.O. 1020 of 2015 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 with all requisite formalities.

(Biswajit Basu, J.)