

06.07.2022
(D/L-10)
Ct.-18
(Susanta)

C.O. 1416 of 2022

Prantik Banerjee & Anr.

-Vs-

Mr. Kalyan Kumar Saha alias Shaw & Ors.

Mr. Aniruddha Chatterjee,

Mr. Iftekar Munshi,

.... For the Petitioners.

Mr. Jahar Chakraborty,

Ms. Sabita Mukherjee Roy Chowdhury,

.... For the Opposite Parties.

The revisional application under Article 227 of the Constitution of India is directed against Order no. 71 dated January 29, 2019 and Order no. 73 dated March 30, 2019 passed by the 5th Bench of Presidency Small Causes Court, Calcutta in the said suit being Ejectment Suit no. 220 of 2007.

On the death of Sharmila Banerjee, one of the parties representing the defendant/tenant, her husband and son, the opposite party nos. 1 and 2 herein respectively, applied for their addition in the suit.

The learned Trial Judge by the impugned order no. 71 dated January 29, 2019 and order no. 73 dated March 30, 2019 has dismissed both the said applications.

In the present application under Article 227 of the Constitution of India, the husband and the son of the deceased defendant have challenged the said orders.

The son of the deceased defendant is not coming within the definition of 'tenant' as defined under Section 2(g) of the West Bengal Premises Tenancy Act, 1997, as such the learned Trial Judge has not committed any error in dismissing his application for addition, as such, the order no. 73 dated March 30, 2019, does not call for any interference.

The husband of the deceased defendant although prima facie comes within the aforesaid definition of 'tenant' but the plaintiffs since are claiming that the original tenant was the father of the deceased defendant, the claim of her husband that he has inherited the tenancy is not beyond doubt, therefore, addition of opposite party no. 1 in the suit is allowed keeping the question as to the legality and propriety of the devolution of the said tenancy upon the opposite party no. 1 open. In view thereof, the order no. 71 dated January 29, 2019 is set aside.

The opposite party no. 1 is permitted to contest the suit by adopting the defence taken by his deceased wife in her written statement. It is made clear that he is not entitled to file any further pleadings.

The suit was proceeding ex-parte against the deceased defendant but her husband, since has been added in the suit, let it be withdrawn from the Ex-parte Board.

This Court is informed that the evidence-in-chief of the plaintiffs' witness has already been

tendered but the cross-examination of the said witness is pending.

The added defendant shall conclude the said cross-examination of the said witness on the next date fixed, in default, the evidence of the said witness shall stand closed.

Mr. Chakraborty, learned Counsel for the opposite party submits that the plaintiffs have no other witness to cite, they will only cross-examine the Advocate Commissioner.

The added defendant, immediately after the conclusion of the Advocate Commissioner's evidence, shall file his evidence-in-chief on the date fixed for the said purpose, in the event the said defendant fails to file his said evidence on the date so fixed, his evidence shall be closed.

C.O. 1416 of 2022 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.)