

14.9.2022
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Ct. no. 652
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C.O. 1758 of 2021

Sri Sanat Kumar J Mehta & ors.
Vs.
Sri Vinay Kumar Abhani

Mr. Probal Mukherjee
Mr. D.K. Sengupta
Ms. Sweta Saha ...for the petitioners

Mr. Jishnu Chowdhury
Mr. Arif Ali ...for the opposite party

Being aggrieved and dissatisfied with the order dated 27.1.2021 passed by learned Civil Judge, (Junior Division) 6th Court, Alipore in RC no. 305 of 2004, the present application under Section 227 of the Constitution of India has been preferred.

The opposite party has filed a suit for eviction and for a decree of recovery of khas possession of the suit premises and mesne profit under the West Bengal Premises Tenancy Act 1997 in the year 2004 against the petitioners. The petitioners contended that J.K.Meheta, the father of the petitioners was inducted as tenant in the suit premises in the year 1974. After the death of original tenant the petitioner and widow of the original tenant, continued to reside in the said premises as joint tenants. The opposite party filed the said suit admitting them as joint tenants. On the basis of notice dated

30.12.2002 under Section 6(4) of the Act present suit was initiated. The petitioners filed written statement and contesting the suit contending that the petitioners are joint tenants and the joint tenancy continuing even after the death of the original tenant and his widow and there is no scope to deny the joint tenancy of the petitioners under the plaintiff/opposite party. During pendency of the suit, defendant no. 1 i.e. widow of the original tenant died on 5.2.2016 and her name was duly expunged.

Now the plaintiff/opposite party has filed an application under order VI Rule 17 for amendment of the plaint to the effect that the defendant no. 1 i.e. widow of the original tenant died on 5.2.2016. Accordingly the tenancy has been ceased and as such the defendants have no right to continue in possession as tenants and on this score the suit should be decreed in favour of the plaintiff.

Learned counsel for the petitioner, Mr. Probal Mukherjee submits that the respondent/plaintiff with mala fide intention, filed said application for amendment of the plaint. He submits that opposite party filed the instant suit against erstwhile defendant no. 1 and also against the petitioners herein as joint tenants and as such question of invoking Section 2(g) of the Act of 1997 is not applicable in the present context. The petitioner also filed written objection against the amendment petition.

Learned counsel for the petitioner, Mr. Mukherjee further submits that learned trial court had erroneously observed that the proposed amendment if allowed will not change the nature and character of the suit, without considering the fact that the suit for eviction was filed on the ground of reasonable requirements which is a rent control statute and the purported amendment if allowed, it shall practically change the nature and character of the suit by transforming the suit into a lis under the General law. In fact by way of proposed amendment there would be a change of basic structure of entire suit and the plaintiff by way of purported amendment is attempting to invoke Section 2(g) of the Act of 1997 in order to cease the defendants' tenancy right but same is not the nature and character of the aforesaid RC no. 305 of 2004. Moreover, the opposite party filed the instant suit against erstwhile defendant no. 1 and also the petitioners herein as joint tenants and thus there cannot be cessation of tenancy only on the ground of death of erstwhile defendant no. 1 when the suit was instituted against the joint tenants/defendants/petitioners herein along with the deceased defendant/widow of the original tenant. He further contended that the suit was instituted against the petitioners as joint tenants and not tenant in common and if the proposed amendment allowed practically it would make the petitioners defenceless and alter the entire proceeding and will cause irreparable loss

to the defendants. Accordingly the defendants/petitioners have prayed for setting aside the impugned order.

In this context the petitioners relied upon the Supreme court judgment in ***Nasima Naki Vs. Todi Tea Company ltd. & Ors.***, reported in **2019 SCC OnLine SC 1601** and also single bench judgment of this court passed in C.O. 3022 of 2009 in support of the contention that the defendants are joint tenants and not tenants in common, upon devolution of tenancy by inheritance.

In this context the learned counsel for the opposite party, Mr. Jishnu Chowdhury submits that Section 2(g) of the Act makes it clear that the tenancy right of the present defendants/petitioners continued only up to five years after the death of original tenant. However, under Section 2(g) of the Act of 1997 the widow of original tenant is given lifetime tenancy right. Accordingly, as per definition of Section 2(g) with the death of the widow, of the original tenant on 5.2.2016 there exists no tenancy right in the suit premises and as such the defendant/petitioners are liable to be evicted from the suit premises. In this context the opposite party relied upon a judgment of this court reported in **(2017) SCC OnLine Cal 1807**.

I have heard both the parties at length and considering the submissions of the parties, at the outset

the definition of tenant as given in Section 2g of the West Bengal Tenancy Act, 1997 may be reproduced below:

“2(g) "tenant" means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family and were dependent on him but shall not include any person against whom any decree or order for eviction has been made by a court of competent jurisdiction:

Provided that the time limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises: Provided further that the son, daughter, parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.”

In the present context proposed amendment is imperative for proper and effective adjudication of the case to determine tenancy right, if any of the petitioners and there is nothing to show that such prayer for amendment is made with mala fide intention to defeat the law and on the contrary refusal of such amendment may lead to multiplicity of litigations as in that event principle issue involved in the case shall remain unsettled for want of pleadings and as I have already indicated proposed amendment, if allowed will not

change the nature and character of the suit as the suit will remain a suit for eviction of the petitioners from the suit premises.

Needless to say under the 1956 Act, after the death of the original tenant his heirs got tenancy right in respect of the suit property by way of inheritance but in the new act of 1997 the right of original tenant have been curtailed and restricted. However, the moot question raised in the present context is whether the proposed amendment is at all required to determine the real question in controversy between the parties.

The real question in controversy between the parties is whether the right of tenancy continuing as joint tenants even after death of defendant no. 1 or they are liable to be evicted, by operation of law. If the proposed amendment is allowed the basic nature and character of the suit will not change as the suit even after amendment will remain suit for eviction of the petitioners from suit premises on ***M/s. Revajeetu Builders & Developers Vs. M/s. Narayanswami & Sons & Ors.*** reported in **(2009) 10 SCC 84** Apex Court laid down certain basic principles which ought to be taken into consideration while dealing with an application for amendment.

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

accordingly, such amendment is required to determine the real question in controversy between by the parties. Furthermore, in my considered view such amendment will not cause prejudice to the defendants, if liberty is given to the opposite party to file additional written statement to them where they can very well take the defence of joint tenancy, if not already taken and the dispute will be adjudicated by the trial court accordingly, once for all.

Having considered the facts of the case, I do not find any reason to interference with the impugned order dated 27.1.2021 passed in RC 305 of 2004.

Accordingly, C.O. 1758 of 2021 is dismissed. However such dismissal order will not preclude the defendant/petitioner to file additional written statement, if any, against the amendment of plaint, within a period of four weeks from the date of the communication of the order.

Urgent Photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)