

266 **20.09.**
2023
Ct. No. 652

Ab

SA 212 of 2013
IA No. CAN 3 of 2022
IA No. CAN 4 of 2022

Smt. Minarani Mahapatra and others
Vs.
Palash Kusum Jana.

Mr. Sounak Bhattacharya,
Mr. Abhirup Halder.
... for the appellants.

Mr. Amit Baran Dash,
Ms. Ankana Sarkar.
... for the respondent/applicant.

Re: CAN 4 of 2022

This is an application for appropriate order for enhancement of occupational charges.

Learned Counsel on behalf of the applicant does not want to press the instant application.

In view of the above, CAN 4 of 2022 is, accordingly, dismissed as “not pressed”.

Re: CAN 3 of 2022

This is an application for addition of party under Order XXII Rule 10 of the Code of Civil Procedure.

It is submitted that during pendency of this appeal, the suit premises has been transferred in favour of the present applicant, Sanjib Jana, through registered deed of sale dated 6th July 2022 and after purchase, the applicant also recorded his name in the record of rights and also paying taxes to the Government.

In such view of the matter, the applicant has become a necessary party of the present second appeal.

Mr. Sounak Bhattacharya, learned Counsel appearing on behalf of the appellants did not raise any objection to such prayer.

In such view of the matter, prayer for adding the name and description of the applicant, Sanjib Jana, in the category of respondent in the cause title of Memorandum of Appeal is allowed.

Department is directed to make necessary correction at once.

RE: SA 212 of 2013.

The present second appeal has been preferred against the judgment and decree passed on 31st August 2012 in Other Appeal No. 36 of 2007.

It is submitted that the said judgment and decree was passed in connection with an eviction suit which was filed on the ground of reasonable requirement of the plaintiff / erstwhile landlord. The trial Court vide its judgment dated 12th March 2007 passed eviction decree on the ground of reasonable requirement in favour of the plaintiff/landlord in O.S. 24 of 2006 and being aggrieved by that judgment and decree, the aforesaid Other Appeal NO. 36 of 2007 was preferred by the tenants/appellants.

The decree of eviction was also affirmed by the Appellate Court only on the ground of plaintiff/erstwhile landlord's personal requirement and since the said landlord for whose requirement the decree was passed has already assigned and is no longer owner/landlord of the present appellants in view of the purchase of suit premises by added respondents in the year 2022, the decree of eviction in favour of erstwhile landlord's requirement has now become infructuous and liable to be set aside. At the time of hearing original respondent Palash Kusum Jana was not represented and added respondent Sanjib Jana upon whom suit property has been devolved by way of transfer expressed his intention not to proceed further with the appeal.

In such view of the matter, the impugned judgment and decree dated 31st August 2012 passed by the learned Civil Judge (Senior Division), 2nd Court, Contai in O.A. 26

of 2007 and the judgment and decree passed by the Trial Court on 12th March 2007 and 12th April 2007 respectively by the learned Civil Judge (Junior Division), 1st Additional Court, Contai in O.S. 24 of 2006 are hereby set aside.

The appeal being S.A. 212 of 2013 is, accordingly, allowed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)