

09.10.2023

Sl. No.4

ss

C.O. 432 of 2023

Sri Pradip Majumder

Vs.

Sri Subir Majumder & anr.

Mr. Partha Pratim Roy

Mr. Anirban Das

... for the petitioner

Mr. Dipankar Dhar

Mr. Rudra Dhar

... for the opposite party no.1

The petitioner has challenged an order dated January 11, 2023 passed by Civil Judge (Senior Division) 3rd Court, Barasat, North 24 Parganas in Title Suit No. 645 of 2020. The application for addition of party, filed by petitioner was rejected

The revisional application was admitted for determination of the question whether addition of a co-owner could be allowed in a suit for eviction and the co-owner could be allowed to contest the suit against the plaintiff. The plaintiff had brought the suit for eviction of a tenant under the West Bengal Premises Tenancy Act (hereinafter referred to as “the said Act”).

It appears that the suit was filed on December 22, 2020. The application under Section 7(2) of the said Act, filed by the tenant, was rejected. Thus, the protection from eviction, to which the tenant was entitled under the said Act, was no longer available.

After two years from the filing of the suit, the petitioner as a co-owner filed an application for addition of party on the ground that the tenant was not a defaulter and the petitioner was accepting rent from the tenant.

Mr. Roy submits that if a co-owner appears before the Court and submits that he had not given any consent to the filing of the suit and was supporting the cause of the defendant/tenant, such co-owner should be added in the suit and allowed to contest the same.

From plaint, it appears that the opposite party no.1 filed a suit for eviction against the opposite party no.2 under some of the grounds under Section 6 of the said Act. The tenanted property was a shop room measuring around 136 Sq.ft. The shop-room was situated in the ground floor of Dag No.1695 and Dag No.1699, within the local limits of Kamarhati Municipality.

Paragraph 2 of the plaint states that the plaintiff and his two brothers had inducted the defendant as a tenant in the suit property by executing a rent agreement on December 22, 1993. All the three landlords were issuing rent receipts. The plaintiff was administering the suit property as the executor of the estate of their deceased father, who died testate. Plaintiff resided at the suit

property with his son. The defendant did not pay any rent either to the plaintiff or to his brothers after February, 2016. The suit premises was kept under lock and key. Taking advantage of the fact that the plaintiff was a senior citizen and an old and ailing person, the defendant was trying to sublet the property. Addition and alternation to the property in question, was also being made.

The plaintiff served a notice to quit upon the defendant and also called upon him to pay the arrear rents. The cause of action to file the suit for eviction arose on December 1, 2020, when the defendant, despite service of notice, did not deliver vacant possession of the property in favour of the plaintiff. The defendant had become a trespasser in respect of the suit property.

Mr. Roy, learned Advocate appearing on behalf of the plaintiff submits that if a co-owner files a suit for eviction, it would be assumed that other co-owners had given consent. There was no pleading of such consent. He further submits that the cause of action as pleaded, indicates that the plaintiff alone wanted to take delivery of the tenanted property, upon eviction of the tenant. All the sons of Late Ashutosh Majumdar had beneficial interest in the estate of Late Ashutosh Majumdar by virtue of the last will and testament of their father. The

petitioner was also apprehensive that upon taking delivery of possession from the defendant/tenant, once the eviction decree is passed, the plaintiff will assert independent title in respect of the said property in question and deal with the property for his personal interest without protecting the interest of the other brothers.

Mr. Roy relies on the decision of the Hon'ble Apex Court in the matter of **India Umbrella Manufacturing Co. and ors. Vs. Bhagabandei Agarwalla (dead) Lrs. Savitri Agarwalla (Smt.) & ors.**, reported in **(2004) 3 S.C.C. 178** and submits that consent of co-owners could not be assumed to be taken if the co-owner contends that he was not agreeable to eject the tenant. In the event of disagreement, the suit could not be filed by one co-owner on behalf of others.

Learned Advocate for the opposite party no.1/plaintiff submits that the suit was filed on behalf of all the brothers. The consent was assumed and the right of all the brothers to file the suit crystallised on the date the suit was filed. Further, it is submitted that the estate of Ashutosh Majumdar was being represented by the plaintiff who was the executor of the will (since probated). There is sufficient indication in the plaint that the suit was filed on behalf of all the brothers and the plaintiff did

not, at any point of time, deny the right of two brothers in respect of the property in question. Although the will was probated, the duty of the executor remained. Distribution of the property amongst the legatees in order to ultimately carry out the wish of the testator was still left to be done. Three of the sons of Ashutosh were the beneficiaries of the estate. The plaintiff as the executor represented the estate. There is a partition suit pending amongst the brothers for division of the estate. There is also an order of injunction in the nature of *status quo* with regard to the estate, which form a part of the partition suit.

Under such circumstances, the order impugned does not appear to suffer from any perversity. The apprehension of Mr. Roy that if the suit is decreed and the tenant delivers vacant possession of the shop room to the plaintiff, the plaintiff will use the same for himself and his family members, is misconceived. Even if one of the joint owners (plaintiff and his family members) utilises the property till the partition suit is disposed of, such utilisation of the shop-room would only be subject to the final decision in the partition suit and shall not create any equity in his favour. If the petitioner has any other claim against the opposite

party no.1, he may take necessary steps by filing separate suit, strictly in accordance with law.

With the above observations, this revisional application is disposed of. The order impugned is upheld.

Parties are directed to act on the basis of the server copy of this order.

Urgent certified copy of this order, if applied for, be handed over to the parties on usual undertaking.

(Shampa Sarkar, J.)