

October 4, 2023
Sl. No.34
Court No.19
s.biswas

CO 1610 of 2023

Runu Dey and others
vs.
Sujit Sharma and another

Mr. Suhrid Sur

... for the petitioners

This revisional application arises out of an order dated March 24, 2023 passed by the learned Civil Judge (Junior Division), 3rd Court at Alipore in Title Suti No.3562 of 2009.

By the order impugned, the learned court allowed an application under Order 22 Rule 3 of the Code of Civil Procedure. The petitioners submit that two of the sons of the sole tenant who died intestate on May 24, 2021, were added in the proceedings to contest the suit as plaintiffs. The suit is for declaration of tenancy right. The daughters of the deceased did not seek addition.

Mr. Sur, learned advocate for the petitioners/landlord, submits that the order impugned suffers from material irregularity inasmuch as, the said sons who have been substituted could not be defined to be tenants under the provision of the West Bengal Premises Tenancy Act, 1997. They were not dependent on their father on the date of death and were not entitled to claim tenancy upon the death of their father in respect of the suit premises.

It is further contended that the provision of Section 2(g) of the said Act would operate as a bar to the addition of the sons.

The learned court below, upon consideration of the submission, held that even if Section 2(g) of the Act would come into play, the sons still had at least five years to continue in the premises.

Mr. Sur further submits that the sons did not deny the fact that they were not dependent on the father.

Having considered the submission of Mr. Sur and the records, this court is of the view that although there were four legal heirs of the deceased only his two sons were substituted. Whether the sons were dependent on the father at the time of his death and were in a position to get the benefit of residing in the premises for five years from the date of death, are matters of evidence. At the stage of substitution, such evidence was not gone into.

Under such circumstances, this revisional application is disposed of without interference. The learned trial judge is directed to frame an issue along with other issues with regard to the maintainability of the suit at the instance of the two sons of the original plaintiff upon the death of the original plaintiff. A further issue as to whether the said sons were dependent on their father/original tenant, at

the time of death will also be framed. These two issues shall be decided as issue nos.1 and 2 along with other issues.

It is made clear that the entire suit shall be disposed of within a year from the date of framing of issues.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)