

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**C.O. 1814 of 2021
Shri Jogesh Gupta
Vs
Shree Shree Iswar Satyanaraynji & Ors.**

For the petitioners	:	Mr. Srijib Chakraborty Mr. Subhasis Chakraborty Mr. Deeptangsu Kar Ms. Sushmita Kumari Singh
For the O.P. No.1	:	Mr. Haradhan Banerjee Mr. Partha Pratim Mukherjee
For the O.P. Nos. 1 to 8	:	Mr. Sakya Sen Mr. Animesh Paul
		:
Heard on	:	17.05.2023
Judgment on	:	28.06.2023

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the order dated February, 24, 2021 passed in Title Suit No. 152 of 2000 by the learned Civil Judge (Senior Division) 2nd court at Howrah, present application under Article 227 of the constitution of India has been preferred. By the impugned order learned court below has been pleased to reject the petitioners application under order 1 rule 10(2) of the Code of Civil Procedure.

2. Petitioner's case in brief is that the plaintiff/opposite party no. 1 to 8 herein filed aforesaid suit against the defendants /opposite party no. 9 to

13 herein for recovery of khas possession of the suit premises, mean profit and for other reliefs. Defendants/opposite party no. 9 to 13 herein appeared in the said suit and filed written statement coupled with counter claim. In the said suit the petitioner herein filed an application under order 1 rule 10(2) of the code on July, 14th, 2003 praying for addition of the petitioner in the category of defendants in the said suit. Plaintiffs/opposite party no. 1 to 8 filed written objection against the said application. Learned Court below by the impugned order has been pleased to reject the said application.

3. Being aggrieved by the said order petitioner submits that the Trial Judge erred in rejecting his said application while he failed to appreciate that the petitioner was inducted as 'Ghar Bharatia' in respect of four godowns made with brick wall and tile or tin shade at the suit property, at a monthly rent of Rs. 1320/- and he has paid rent up to the month of May 2003 to M/s. Empress of India Jute Press, whose name has been recorded as Thika tenant with regard to the suit property. He further submits that the court below failed to appreciate that the property in question being Thika property, the suit is not maintainable before the said forum and suit is barred under section 21 of the West Bengal Thika Tenancy (Acquisition and Requisition) Act 2001.

4. Learned Counsel appearing on behalf of the petitioner strenuously argued that the defendants /opposite party no. 9 to 13 are acting in collusion with the plaintiff/opposite party no. 1 to 8 in order to evict the petitioner herein which is reflected from the fact that collusive written statement has been filed supporting the case of plaintiff and in view of such fact it is necessary that the present petitioner be added as a

party/defendant in the suit in order to enable the court to adjudicate the dispute in appropriate manner.

5. He further submits that the court below failed to appreciate that the petitioner's presence in the suit is required for determining the real question in controversy, in as much as, the suit cannot be decided in the absence of the petitioner herein and his interest will be seriously prejudiced if he is not added as a party/defendant in the said suit. His further case is that it is not in dispute that the petitioner is in possession of the suit property and if a decree of eviction is passed in the said suit, which according to the petitioner is a collusive suit, it will affect the petitioner herein without having any opportunity to oppose such eviction before a court of law. He further submits that the observation of Trial Judge that the issue as to whether the defendant/opposite parties are recorded Thika tenants or not and the existence of arbitration clause in the lease deed are questions relating to the interest of plaintiffs/opposite parties and defendant/opposite parties and defendant/opposite parties are the best person to address those question before the court of law, is perverse since the defendant/opposite parties have colluded with the plaintiff/opposite parties and for which the petitioner is required to be added as a party in order to adjudicate the real controversy between the parties. His further case is since the defendants/opposite party No. 9 to 13 herein have colluded with plaintiffs/opposite party no. 1 to 8 herein, the petitioner would be seriously affected by any outcome of the pending suit. But the court below erroneously came to the conclusion that the decision of the suit will not affect the interest of the petitioner herein and presence of the petitioner

herein is not necessary for adjudication of the suit. In fact in order to avoid multiplicity of proceedings, present petitioner is required to be added as a party, since the object of impleadment under order 1 rule 10 (2) in the code is to minimize litigation.

6. It is the specific case of the petitioner that the Trial Judge did not consider the documents which shows that the suit property is a Thika property and possession of the petitioner has been admitted by the plaintiff/opposite parties and he also failed to consider that the defendants/opposite party no. 9 to 13 herein have intentionally suppressed the arbitration clause and filed the written statement in the instant suit. Accordingly the petitioner has prayed for setting aside the order impugned and for passing necessary order to implead the petitioner as a defendant in the said suit. In this context petitioner relied upon the judgment passed in ***Importers and Manufacturers Ltd. Vs. P.F. Taraporewala and others*** reported in **(1952) 2 SCC 728** and another unreported judgment of Apex Court in ***APD No. 501 of 2015 (shri Lalit Kumar Bal and others Vs. Rajib Kr. Poddar and others)***.

7. Learned counsel appearing on behalf of the plaintiffs /opposite parties no. 1 to 8 vehemently opposed the said prayer made by the petitioner for adding him as defendant in the suit. Plaintiff/opposite party contended that plaintiff is *dominus litis* in the suit and being master of the suit, he has absolute direction to decide against whom he wants to fight and against whom he does not want to fight. He further contended that the petitioner has no right or locus to interfere or to be heard in the suit for eviction filed by the lessors (plaintiffs/opposite party no 1 to 8 herein) and

lessee/defendants /opposite party no. 9 to 13. Referring the judgment in ***Rupchand Gupta Vs. Raghubasni Pvt. Ltd.*** reported in **AIR 1964 SC 1989** petitioner contended that the legal proposition is well settled and in this context he further relied upon the case of ***Burmah Shell oil Distributing Vs. Khaja*** reported in **1988 3 SCC 44** (para 8) and ***Mainuddin Tarafdar Vs. Buddhadev Halder & others*** reported in **1994 (2) CLJ 360** (para 6) and also an unreported decision passed in **C.O. 3189 of 2018** by this Court.

8. In this context learned counsel appearing on behalf of the plaintiff further submits that ratio laid down in **Importers case (supra)** which held that a sub-lessee is though not a necessary party but a proper party has not been followed or cited subsequently. He contended that it has been specifically held by the Apex Court in ***Balvant N. Viswamitra and others Vs. Yadav Sadashiv Mule*** reported in **(2004) 8 SCC 706** that a sub-lessee has no right to be impleaded, even though it takes note of **Importers and Manufacturer case (supra)** and followed the earlier judgment in **Rupchand Case(supra)**. In this context he further submits that it is also settled law that in the case of conflicting judgments by Benches of equal strength, the later judgment to be followed as held in ***Govind Nail G. Kalaghatigi Vs. West Patent preroco. Ltd. & another*** reported in **AIR 1980 Kar 92 (FB)**.

9. Learned Counsel appearing on behalf of the opposite parties no. 1 to 8 strongly denied the petitioners allegation of collusion in between the plaintiffs and defendants in filing the instant suit. He further contended that though the petitioner has taken a plea that ignoring arbitration clause mentioned in the lease deed, the parties are proceeding with the suit but

under the provisions of section 8 of the arbitration and Conciliation Act 1996, the plea of arbitration has to be raised necessarily at the earliest opportunity and in any case before the first statement of defence is filed in the proceeding. In reply to petitioners allegation of collusion, opposite parties/plaintiff argued that the present petitioner has been set up by the defendants (opposite party no. 9 to 13 herein) to muddy the waters of the present case and in reality it is the defendants and petitioner who are in collusion with each other. He further submits that the West Bengal Estate Acquisition Act 1953 has got no application in the present context, since section 6 of the said Act makes it clear that provision under said Act is not applicable to properties which are used purely for religious and charitable purposes. In the present case, the deed of settlement admittedly establishes the purpose of the suit property as being a religious/charitable endowment, which is not for any personal gain. It is also settled law that the lessee or the sub-lessee cannot question the title of the lessor. In this context he relied upon the judgment in ***Sriram Pasricha Vs. Jagannath & others*** reported in **(1976) 4 SCC 184** (para 14) and ***State of Andhra Pradesh and others Vs. Raghukul Pershad*** **(2012) 8 SCC 584**.

10. In this context he further contended that West Bengal Thika Tenancy (Acquisition and Regulation) Act, 1981, i.e. Act of 1981 was repealed and Act of 2001 came into being in 2001. Naturally when the judgment of Nemai Chand Kumar (Supra) was passed, Act of 2001 was in operation. In Paragraph 35 of the said judgment, it was observed that if the lease is for more than twelve years and secondly if there is even one pakka structure, then it cannot be a Thika tenancy. In the present case admittedly the

original lease deed dated 29.04.1967 was for a period of thirty years and the lease deed itself records that the defendant's predecessor in-title under the earlier lease had constructed permanent pucca structure, which were existing on the suit property when the lease of 1967 was executed. Moreover in view of the judgment passed in ***Shri Iswar Satyanarayanhee & others Vs. Administrator, Corporation of Calcutta & others*** reported in **1988 (2) CLJ 314**, it is well settled that the property exclusively belonging to the deities for the religious purpose cannot be affected in terms of section 5 of the Amendment Act of 1981. Therefore according to plaintiff suit property being exclusive property of deity cannot be said to be vested to the state.

11. He further contended that the defendants in their written statement admitted the execution of the lease deed in paragraph 10 and also admitted ownership of the plaintiffs in paragraph 9. The only contention made by the defendant in their written statement is that there was a renewal clause for a further period of twenty-one years in the said lease deed and they have exercised such right, and as such they made counter claim to that fact, but even assuming but not admitting said contention of exercise of renewal as true, such renewal period has also been expired in the year 2017, during pendency of the said suit. He further submitted that the case of collusion between the plaintiffs and defendant are absolutely false as the defendant during the pendency of the suit sought to incorporate the plea of Thika tenancy in their written statement by way of amendment and such amendment application was initially allowed by the Trial court. However this court in C.O. no. 3226 of 2017 was pleased to reject the said plea for incorporation in the plaint against which, special leave petition was

preferred before the Apex Court which was not admitted by the Apex Court. Accordingly the defendant's plea with regard to Thika tenancy has been foreclosed and by no stretch of imagination the petitioner can be called either as a necessary party or proper party in the suit.

12. Learned counsel appearing on behalf of the plaintiff/opposite parties also distinguished the judgment in the case of ***Benimadhav Mahrotra Vs. Howrah Flour Mills Ltd.*** reported in **89 CWN 76** contending that the said case was in respect of the West Bengal Premises Tenancy Act but present case is guided under the Transfer of Property Act. Moreover in the said case there was tripartite agreement entered into between the plaintiff, defendant and sub-lessee and on such score, it was held that the petitioner was lawful sub-lessee and as such is a proper party but in the present case defendants or the petitioner has failed to show a single document that petitioner herein is a lawful sub-lessee. Similarly he distinguished ***South Asia Industry Private Limited case*** reported in **(1965) 3 SCR 829** stating that in the said case, there was consent of the land lord with regard to induction, whereas in the present case there is no such consent for granting sub-lease by the plaintiff. Accordingly he concluded that the court below has rightly rejected the application under order 1 rule 10(2) filed by the petitioner, observing that the petitioner is not an agent of the defendant and court below rightly observed that since this is a suit for eviction, the primary point for consideration is existence of relationship of landlord and tenant or lessor and lessee between the parties and if the plaintiff failed to prove title in respect of the suit property and failed to prove status as landlord in respect of defendant, then his suit will automatically fail and the decision of this

suit will not affect the interest of the petitioner herein and as such petitioner is neither a proper party nor a necessary party for the purpose of adjudication of the suit. Accordingly he submits that the order impugned does not call for interference.

13. I have considered submission made by both the parties.

14. The only question to be decided in the present context is whether law requires the sub-lessee/petitioner need be made a party in a suit for eviction against a lessee where lessee has been pleaded by the lessor to be terminated in both ways i.e. by way of notice as well as by efflux of time. It is not in dispute that the defendants plea of Thika tenancy has not been incorporated in the plaint for adjudication in the suit, as the prayer for incorporation of such plea by way of amendment in the written statement has been turned down by this court and against which though Special Leave Petition was preferred before the Supreme Court, but said SLP was not admitted.

15. Petitioner in support of his impleadment in the suit as a defendant has heavily relied upon an earlier decision of three Judges Bench in **importers and manufactures limited vs. phirozeefarmrozeetara porewala and other** reported in **(1952) 2 SCC 728** where in it was held in paragraph 7 as follows:-

“.....Apart from that section, under the ordinary law a decree for possession passed against a tenant in a suit for ejectment is binding on a person claiming title under or through that tenant and is executable against such person whether or not he was or was not a party to the suit. The non-joinder of such a person does not render the decree any the less binding on him. It is in this sense, therefore, that he is not a necessary party to an ejectment suit against the tenant. It is, however, recognised that such a person is, nevertheless, a proper party to the suit in order that the question whether the lease has been properly determined and the plaintiff landlord is entitled to recover possession of the premises may be decided in his presence so that he may have the opportunity to see

that there is no collusion between the landlord and the tenant under or through whom he claims and to seek protection under the Act, if he is entitled to any. Such a person may be joined as a party to the suit from the beginning of the suit or at any later stage of the suit if the Court thinks fit to do so. The joinder of such a proper party cannot alter the character of the suit and does not make the suit any the less a suit between the landlord and the tenant or take it out of Section 28 of the Act. To hold otherwise will be to encourage multiplicity of suits which will result in no end of inconvenience and confusion.”(emphasis added)

16. In the present context petitioner’s specific case is even if the petitioner is treated as a sub-lessee and not a ‘Bharatia’ under the Act of 2001, even then by dint of law laid down by the apex court in **Importers case (supra)** he is a proper party, in the suit if not necessary party, because the question whether lease has been properly determined and whether the plaintiff is entitled to recover possession of the premises, should be decided in his presence, so that he may have the opportunity to see that there is no collusion between the plaintiff/land lord and the defendants/opposite party no. 9-13 herein. Petitioner further contended that he has specifically pleaded in his application that the plaintiffs and the defendants are in collusion with each other in the said suit. Citing two instances petitioner contended that prima facie plea of collusion have been well established in the present case and the instances are:

(1) defendants/opposite party no. 9-16’s inaction of not incorporating the issue of acquisition of their right under the Thika Tenancy Act in the original written statement and

(2) Despite arbitration clause, said defendants before filing the written statement had not prayed before the court for referring the dispute before the arbitrator.

17. In reply learned Counsel appeared on behalf of the plaintiff/opposite party no. 1-8 contended that he has no right or locus to interfere or to be

heard in a suit for eviction filed by the lessor against the lessee. He further contended that the legal proposition in this context is well settled by the Apex Court in the case of **Rupchand Gupta Vs. Raghuvanshi Private Limited & another** reported in **AIR 1964 SC 1889**. Para 12 of the said judgment runs as follows:-

“12. Taking the last action first viz. Raghuvanshi's omission to implead the appellant, it is quite clear that the law does not require that the sub-lessee need be made a party. It has been rightly pointed out by the High Court that in all cases where the landlord institutes a suit against the lessee for possession of the land on the basis of a valid notice to quit served on the lessee and does not implead the sub-lessee as a party to the suit, the object of the landlord is to eject the sub-lessee from the land in execution of the decree and such an object is quite legitimate. The decree in such a suit would bind the sub-lessee. This may act harshly on the sub-lessee; but this is a position well understood by him when he took the sub-lease. The law allows this and so the omission cannot be said to be an improper act.”

18. In the case of **Burmah shell Salee Oil distributing Vs. Khawza Midhat nor and others** reported in **(1988) 3 SCC 44** reiterated the same view:-

“12. In Rupchand Gupta v. Raghuvanshi (Pvt.) Ltd. [AIR 1964 SC 1889] it was held by this Court that it is quite clear that law does not require that the sub-lessee need be made a party, if there was a valid termination of the lease. This Court reiterated that in all cases where the landlord instituted a suit against the lessee for possession of the land on the basis of a valid notice to quit served on the lessee and did not implead the sub-lessee as a party to the suit, the object of the landlord is to eject the sub-lessee from the land in execution of the decree and such an object is quite legitimate. The decree in such a suit would bind the sub-lessee. This Court noted at page 1892 of the report that this might act harshly on the sub-lessee; but this was a position well understood by him when he took the sub-lease. The law allows this and so the omission cannot be said to be an improper act. In the facts of this case these observations apply more effectively. The termination of the lease was not disputed by the lessee. There is no allegation of any collusion between the lessee and the respondent.”

19. Supreme Court in **Mohiuddin Tarafdar Vs. Buddhadev Halder** reported in **1994 SCC online Cal 1963** has observed that a sub-tenant in a suit for eviction under whatsoever act is not a necessary party and as such entry of such person is not required for effective and conclusive adjudication

of the controversy which comes within the range of the determination of the compass or controversy in the pending lis before the Trial Court. Learned counsel for the plaintiff/opposite party contended that the observation made by the Apex Court in **Importers case (supra)** is that sub lessee though not a necessary party may be a proper party and was therefore impleaded, but said judgment has not been followed or cited subsequently. On the other hand he contended that the judgment cited by the opposite party in **Balvant bishwam Vs. Jadav Sadashiv Muley** reported in **(2004) 8 SCC 706** which is also a judgment delivered by three judges bench followed later on wherein it was held that sub-lessee has no right to be impleaded, even though it takes note of the **Importers judgment (supra)** and in fact followed the earlier judgment in **Rupchand's case (supra)**. It is further contended on behalf of the opposite party that in case, there are conflicting judgments by Benches of equal strength then the later judgment ought to be followed and he relied a Full bench judgment of Kerala High Court in **Govind Nayek Jee. Vs. West Patent Press Company limited and another** reported in **AIR 1980 Kerala 92 FB** and also subsequent judgments.

20. In reply learned Counsel appeared on behalf of the petitioner submits that **Burman Shell case (supra)** is not applicable in the present context as in that case termination of the lease was not disputed by the lessee and in the said case there was no allegation of any collusion between the lessee and the lessor. In fact the petitioner contended that the judgments cited by the plaintiffs/opposite party herein had not dealt with the issue of collusion which issue was only dealt with by the Supreme Court in **Importer's and Manufacturers case** and as such the contention of the opposite parties that

the sub-lessee is neither a proper party, nor a necessary party in a suit for eviction does not hold good.

21. In fact petitioner argued in the present context that the Calcutta Thika Tenancy Act 1949 was repealed and replaced by the Calcutta Thika Tenancy (Acquisition and Regulation) Act 1981 under which the interest of land lord in land comprises of Thika Tenancy vested in the State. Accordingly with the enactment of the said Act plaintiff's right title interest in the property has been vested with the State and the plaintiffs have no locus to seek eviction of either the defendants No. 9 to 13 or that of the sub-lessee/'Bharatias' under the said Thika tenant and petitioner could only be evicted by the Thika tenant in an appropriate proceeding instituted before Thika controller. However, said plea has not been incorporated in the pleading which shows that the suit is collusive in nature in between plaintiffs and defendants.

22. In **Rupchand Guptas case (supra)** the issue of collusion has been dealt with in paragraph 9. It was held in Paragraph 9 of that judgment as follows:-

“9. One of the simplest definitions of collusion was given by Mr Justice Bucknill in Scott v. Scott [(1913) Law Reports (Probate Division)] . “Collusion may be defined”, said the learned Judge, “as an improper act done or an improper refraining from doing an act, for a dishonest purpose”. Substantially the same idea is expressed in the definition given by Whatron's Law Lexicon, 14th Edn., p. 212, viz. “Collusion in judicial proceedings is a secret arrangement between two persons that the one should institute a suit against the other in order to obtain the decision of a judicial tribunal for some sinister purpose”. This definition of collusion was approved by the Court in Nagubai Ammal v. B. Shamma Rao [(1956) SCR 451].”

23. Thus the mere fact that the defendant did not pray for referring the dispute before arbitrator inspite of arbitration clause would not necessarily prove collusion. It is only if the agreement is done improperly in the sense

that on a dishonest purpose is intended to be achieved that they can be said to have colluded. Here the petitioner failed to explain as to how by not referring the dispute before arbitrator, what dishonest purpose is intended to be achieved by the defendants. On the contrary though petitioner in support of collusion strenuously argued that inspite of promulgation of the new Thika Tenancy Act defendant has not incorporated the plea of acquisition of Thika tenancy, in the written statement, which proves the case of collusion, but it appears from the facts and circumstances of the case that the defendants of the suit has fought tooth and nail to incorporate the plea of thika tenancy in their written statement. In fact in or about August 2017, Defendants sought to amend written statement thereby proposing addition of pleading with regard to plea of Thika Tenancy. Such amendment application though allowed by the Trial Court but was set aside by an order dated 06.04.2018 by this court in C.O 3226 of 2017, which was assailed by the defendant before the Supreme Court. By an order dated 10.08.2018, the Supreme Court refused to admit the said Special Leave petition. Accordingly it is well established that the defendants have tried their level best to incorporate the plea of Thika tenancy in the pleading and it cannot be said that as there was a collusion between the parties so attempt was not made by the defendants to incorporate said plea of thika tenancy in the written statement.

24. The principle of impleading a third party to a proceeding is now well settled. The sub-lessee/applicant will be indirectly affected by the judgment that may eventually be passed or that the sub-lessee/petitioner is interested in the fruits of the litigation are irrelevant for his impleadment. In fact as a

rule the court should not add a person as defendant in a suit when the plaintiff is opposing to such addition. The reason is that the plaintiff is *dominus litis*. He is the master of the suit. He cannot be compelled to fight against whom he does not claim any relief. Even in **Importer and Manufacturers case (supra)** Supreme Court leaves such issue to the discretion of the Court by saying “such person may be joined as a party to the suit from the beginning of the suit or at any later stage of the suit if the court thinks fit to do so.” So ultimate decision is upon court to decide whether petitioner’s presence in suit required or not for effective and conclusive adjudication of the suit. Here the court below giving sufficient reason observed that the presence of sub-lessee /petitioner herein is not required for effective and conclusive adjudication of the suit and such finding of the Trial Court does not suffer from any illegality, irrationality or procedural impropriety, so that interference of this court can be warranted under Article 227 of the Constitution of India, on the ground of substantial failure of justice or due to any error apparent on the face of the record.

25. In any event, if the sub lessee petitioner is not impleaded in the present suit the result of the suit cannot bind the petitioner herein who has the remedy to file an independent suit or raise the objection as taken in the application for addition of a party, even in an execution proceeding arising from a decree, if any, passed in the present suit, as such the sub-lessee/petitioner would not be remediless in the event he has any legal right in the suit property.

26. In view of above I do not find any substance to interfere with the ultimate decision of the court below and the order does not call for interference.

27. C.O. 1814 of 2021 stands dismissed.

28. However it is made clear that the present order or the order impugned will not prevent the petitioner/sub-lessee from agitating his right if any, in accordance with law before appropriate forum at appropriate stage, subject to law of limitation.

29. There will be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)