

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 1850 of 2021

Amitava Dutta

VERSUS

Upendra Baitha And Ors.

for the petitioner:

Mr. Dyutiman Banerjee, Adv.

for the Opposite Party No.1.

Mr. Navojit Mukherjee, Adv.

Mr. Sourave Chatterjee, Adv.

Last Heard on: February 24, 2023

Judgment on: March 13, 2023

Biswaroop Chowdhury, J:

The Petitioner before this court is a landlord/plaintiff in a suit for eviction and is aggrieved by an order dated 13/04/2021 passed by Learned civil Judge (Jr division) 3rd Court at Alipore in Ejectment suit no 177 of 2018.

The case of the plaintiff/petitioner may be summed up thus

1. The petitioner/plaintiff is the owner of the suit property and the predecessor of the defendant was a monthly tenant under the plaintiff in respect of a garage at a monthly rental of Rs45/-. The father of the plaintiff was the owner in respect of the suit property and he died intestate on 30-06-1977. At the time of death he left

behind his wife one daughter and the plaintiff being his son. All of them got 1/3rd undivided share in the suit property. The plaintiffs mother during her lifetime executed a Will wherein she bequeathed her entire movable and immovable properties in favour of the plaintiff. The plaintiff obtained probate of the said Will and became owner of two third share of the property. The mother of the plaintiff during her lifetime inducted a tenant in the said property, namely Adalat Baitha and after death of the mother of the plaintiff the plaintiff became landlord in respect of Adalat Baitha. Adalat Baitha died on 10-04-2009 and according to section 2 (g) of the West Bengal Premises Tenancy Act 1997 the right of tenancy of the three sons of said Adalat Baitha was for a period of five years from the death of the original tenant and the right of tenancy ceased beyond that point. The plaintiff also reasonably requires the suit property and the defendant was a habitual defaulter of rent.

2. The plaintiff sent the defendant notice under section 6 of the West Bengal Premises Tenancy Act 1997 but the defendant refused to quit, vacate and deliver Khas possession of the suit property. Hence this suit.
3. The defendant contested the suit by filing written statement denying all the allegations therein and prayed for dismissal of the same. The specific case of the defendant is that after the death of said Adalat Baitha

the wife and three sons of Adalat Baitha inherited the tenancy right and therefore at present they are the tenants in respect of the suit property at the moment. Further the defendant was not a habitual defaulter and that the plaintiff did not reasonably require the suit property.

4. In the said suit the defendant filed an application under section 7 (2) of the West Bengal premises tenancy acts 1997, and the plaintiff filed his objection thereto. In the said application the defendant stated that after death of said Adalat Baitha the wife and three sons, of Adalat Baitha inherited the tenancy right and therefore at present they are the tenants in respect of suit property.
5. That during pendency of the said application the petitioner has come to know for the first time on 04/02/2021 from the death report filed by the advocate of the sole defendant that the sole defendant died on 22/07/2020 in Bihar.
6. According to the petitioner as from section 2 (g) of the West Bengal Premises Tenancy Act 1997 it can be understood that the right of tenancy was limited for five years to the sons of the defendant and after the death of the original tenant the same stands extinguished thereafter. Thus the sons of the sole defendant have no right of tenancy of their own and they have no right to contest the suit. The plaintiff filed an application under

Order 22 Rule 4A read with Section 151 of the code of civil procedure praying for appointment of administrator general or any officer to represent the original defendant.

7. By order dated 13/04/2021 the learned trial court was pleased to direct the plaintiff to serve notice upon the legal heirs of the defendant.

The petitioner upon being aggrieved by the order dated 13/04/2021 passed by the learned trial Court has come up with the present application.

It is the contention of the petitioner that the learned Trial Court directed the plaintiff to serve notice upon the legal heirs of the defendant without considering that the sons of Adalat Baitha are not legal heirs and representatives in respect of the tenancy of Adalat Baitha after the lapse of five years from the death of Adalat Baitha. It is further contended that the legal heirs of the defendant have no right to contest the suit since they have not inherited the right of tenancy.

Heard learned advocate for the parties, perused the petition filed and the materials on record.

The following decision is relied upon by the learned Advocate for the petitioner.

MonteeDeyVsChandralekhaRoy.Reportedin2010(3)CHN

(CAL) 443.

Learned Advocate for the opposite parties submits that as his clients have interest in the suit property they should be impleaded for adjudication of the suit.

Now upon hearing the Learned Advocates and considering the facts of the case this Court is of the view that in order to decide whether the opposite parties should be impleaded in the ejectment suit instituted under section 6 of the West Bengal Premises Tenancy Act 1997 it is necessary to consider the definition of tenant as provided under the West Bengal Premises Tenancy Act 1997.

Section 2 (g) of the West Bengal Premises Tenancy Act 1997 defines 'tenant' as follows;

'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 date of coming into force of this acts, 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 his 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 or a person authorised by the tenant who is in possession of such premises] 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 pre-deceased son of the tenant who was ordinarily residing with the tenant in the said premises upto the date of death of the tenant as a member of his family and was dependant 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 [on condition of payment of fair rent]. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.

Hence upon plain reading of the section 2 (g) of the West Bengal Premises Tenancy Act it will appear that on the death of the original tenant his son or daughter who were

ordinarily residing with the tenant and was dependent upon him gets the status of a tenant for a period of five years from the death of the tenant.

In the case of (MonteeDeyvsChandralekha Roy) reported in 2010(3) CHN (CAL) p 443, the Hon'ble Division Bench of this Court observed as follows;

8. 'After hearing Mr Sanyal the Learned Advocate appearing on behalf of the appellants we find that according to the provisions of the West Bengal Premises Tenancy Act 1997 on the death of the tenant the tenancy devolves upon the widow for tenant for life and other heirs who had ordinarily residing at the time of death of the tenant for a period of five years.'
9. 'There is no dispute that the present appellants are the married daughters of the original tenant.'
10. 'Although the mother of the appellants took the plea that the present appellants should also be substituted, the learned trial judge overruled such objection and ultimately decreed the suit.'
11. 'Being dissatisfied the mother of the appellants preferred an appeal and during the pendency of the appeal the said mother died. On the date of death of the mother of the appellants five years time from the date of death of the father of the appellants had already expired and the even if we assume for the sake of argument, that the plaintiffs in spite of being married daughters were

residing along with their father, five years after the death of their father they lost the right of tenancy in the suit property and their mothers tenancy also came to an end on her death.'

12. 'Therefore the learned first appellate Court below rightly held that on the death of the mother of the appellants, right to sue did not survive as the heirs of the mother as the tenancy right in the property of the mother came to an end on her death. Even in that appeal there was no scope of any argument that independently of their own the appellants were entitled to continue tenancy on the death of the father being resident in the property as five years time had already expired from the date of death of the father. Thus there is no infirmity in the order passed by the learned Court of Appeal below.'

In the case of Nasima Naqi vs Todi Tea Company Limited reported in 2019(2) CLJ 232(Cal) Hon'ble Division Bench of this Court observed as follows;

'The status of the specified heirs of the original tenant, in terms of section 2 (g) of the Act of 1997 is that of tenants for a period of five years after the death of the original tenant, subject to such heirs meeting the other conditions specified in the provision; except that the spouse of an original tenant is entitled to life protection in case of premises let out for residential purpose. The

status of all heirs of a deceased original tenant in all other cases except for the spouse in respect of premises let out for residential purpose is as permissive occupants akin to licensees and may even be no different from trespassers except that the entry into the premises was lawful and to such extent they may not be regarded as rank trespassers. In respect of premises let out for non-residential purpose as in the present case the status of tenant that the specified heirs of the original tenant enjoy subject to fulfilling the other conditions for a period of five years after the death of the tenant if the tenant has died after coming into force of the acts of 1997 is completely lost after the expiry of the statutory period. Since it is only a tenant for whose eviction there is a statutory precondition of the issuance of notice under section 6 (4) of the Act of 1997 in the case of an heir of the original tenant continuing in occupation of the non-residential premises after five years following the death of the original tenant when the original tenant died after the coming into force of the Act of 1997, there is no requirement of any notice to be issued by the owner of the premises prior to the institution of the suit for eviction against such heir and on such ground.

In view of the law laid down as above the heirs or the like of the original tenant stands removed upon the expiry of the statutory period following the death of the

original tenant such heirs or the like cannot defend an eviction suit brought by the landlord on any ground, under the Acts of 1997 except for the spouse of the original tenant who enjoys lifetime protection from eviction in respect of premises let out for residential purpose.'

Upon considering the definition of tenant as provided under Section 2(9) of The West Bengal Premises Tenancy Act 1997 and the judicial decisions relied upon it is clear that save and except spouse of the tenant his daughters sons or other relatives cannot remain in the status of the tenant beyond the period of five years from the date of death of the original tenant or beyond the period of five years from the date of coming into force of the West Bengal Premises Tenancy Acts 1997. In the instant matter it is an admitted position that the original tenant died on 10-04-2009 leaving behind his spouse Smt Mahesiya Debi, and three sons Upendra Baitha Nagandau Baitha and Narendra Baitha. As per section 2 (g) of the West Bengal premises tenancy Act 1997 the spouse Smt Mahesiya Debi acquired tenancy right of the suit property till her death on the other hand the sons of the original tenant the opposite parties herein acquired tenancy right for a period of five years. As the spouse of the original tenant who is defendant in Ejectment suit no 177 of 2018 pending before learned Civil Judge (Jr

division) 3rd Court at Alipore died on 22/07/2020 there is no scope for further acquiring tenancy right by the sons of the deceased defendant as per section 2 (g) of the West Bengal premises tenancy Act 1997. In view of the law laid down in the case of NasmaNaqivsTodi (supra) the heirs of the original tenant stands removed upon the expiry of the statutory period following the death of the original tenant such heirs or the like cannot defend an eviction suit brought by the landlord on any grounds under the acts of 1997 except for the spouse of the original tenant who enjoys lifetime protection from eviction in respect of tenanted premises.

In the facts and circumstances this Court is of the view that the order No.15 dated 13/04/2021 passed inEJ-177/2018 by learned Civil Judge (Jr division) third Court Alipore, directing to serve notice upon the legal heirs of the deceased defendant i.e. her sons cannot be sustained and thus the same is set aside.

However, it is to be noted that as the order dated13/04/2021 is passed on an application under Order 22 Rule 4A of the Code of Civil Procedure it is necessary to consider the nature and scope of the said provision. First and foremost it is to be remembered that when sole defendant dies and the right to sue survives the court on an application made in that behalf shall cause the legal representative of the deceased defendant

to be made a party and shall proceed with the suit. Secondly when there is no legal representative or legal representative cannot be traced out the provision contained under Rule 4A of Order 22 of the Code of Civil Procedure is to be invoked. As the right of tenancy to the suit property does not accrue to the opposite parties who are the heirs of the deceased defendant it is necessary to decide as to whether right to sue survives to the plaintiff/petitioner. As the suit is pending before the learned Court below this Court does not deem fit to make any observation in this regard and leaves it to the Learned Court to decide on this issue in accordance with law.

This Revisional Application stands disposed.

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

(Biswaroop Chowdhury, J.)