

01.09.2023
Court No.13
Item No.6
AP

**FAT 257 of 2023
With
IA NO: CAN 1 of 2023**

**Imtiazul Haque
Vs.
Reyaz Ahmed @ Wasim and Ors.**

Mr. Wasim Ahmed
Mr. Md. Kashif

... For the Appellant.

Mr. Manas Kumar Barman

... For the Respondents.

1. The first appeal is tendered against a judgement and/or order dated 26th June, 2023 passed by the Xth Bench, City Civil Court at Calcutta in Title Suit No.666 of 2020.

2. By the impugned order, the Court below allowed an application of the defendants/respondents under order VII Rule 11 (d) of the Code of Civil Procedure, 1908.

3. The brief facts relevant to the case are that the plaintiff/appellant filed Title Suit No.666 of 2020 against the defendants praying as follows:

“a) A decree for a declaration that the plaintiff and the proforma defendants are lawful occupiers of the suit premises and cannot be evicted from the suit premises, fully described in the schedule hereunder written, without due process of law.

b) A decree for a permanent injunction restraining the defendant, his men and agents from disturbing the peaceful possession of the plaintiff in respect of the suit premises, fully

described in the schedule hereunder written and also restraining the defendant, his men and agents from obstructing the plaintiff in any manner from carrying out the urgent repairing work of the suit premises.

c) Temporary Injunction in terms of prayer (b) above.

d) Costs.

e) Any further relief or reliefs as the Ld. Court may deem fit and proper.”

4. At paragraph 3, 4 and 5 of the plaint, the plaintiff has, and across the Bar, Mr. Wasim Ahmed, learned counsel for the appellant, has admitted that his client's father, one Md. Nisarul Haque was a Bharatia (tenant) in respect of the suit property. The property is admittedly a Thika property within the meaning of West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001.

5. Paragraphs 3, 4, and 5 of the plaint are set out hereinbelow:-

“3. The said Md. Nisarul Haque, since deceased started paying rent for the suit premises to the said Mohd. Ibrahim against proper rent bill. The rent for the said tenancies were enhanced subsequently.

4. The said Md. Nisarul Haque died intestate on 03.02.1999 leaving behind his wife Sairunnesa, three sons namely Imtiazul Haque, Md. Ayazul haque and Ejazul Haque and three daughters namely Musarat Bano, Nusrat Bano and Farhat Bano as his only legal heirs and successors. The

said Sairunnesa died intestate on 21.05.2017 leaving behind her said sons and daughters as her only legal heirs and successors. The said Ejazul Haque died intestate on 22.04.2020.

5. The said Mohd. Ibrahim died sometimes in the year 2011. The said Mohd. Ibrahim was a widower and issuleless. He did not have any legal heirs or successors. The family of the Plaintiff had a very friendly relationship with the said Mohd. Ibrahim.

6. It is further alleged at paragraph 8 in the plaint that the defendant has fraudulently entered his name in the records of the authorities under the said Act of 2001 as a Thika Tenant. Paragraph 8 is set out hereinbelow:-

8. The plaintiff and the proforma defendant no. 2 have raised objection before the learned Thika Controller, Calcutta under section 5(3) of the West Bengal thika Tenancy (Acquisition and Regulation) Act, 2001 regarding the fraud of the defendant for getting his name enrolled as a Thika Tenant in respect of the property of Mohd. Ibrahim. The defendant is contesting the said application and the same is pending for disposal”

7. Admittedly, the appellant/plaintiff has filed application under section 5(3) before the Thika Controller for expunging the name of the respondent/defendant as a Thika Tenant in respect of the said property.

8. What is clear and evident from a plain reading of the averments in the plaint is that the property itself is admittedly a thika property within the meaning of the

Act of 2001. The appellant has been living in the property since his birth and has admitted that his father was the 'Bharatia' within the meaning of the said Act of 2001.

9. In view of the clear and unequivocal admissions in the plaint as above, there was no impediment on the Court below in deciding as to whether the suit in question was hit by the provisions of Section 21 of the aforesaid Act, 2001. There was no need for any trial. It is now well-settled that in an application under Order VII Rule 11(d), only the averments in the plaint are required to be considered and nothing else can be looked into.

10. In view of the above, the finding of the Court below that any dispute with regard to a thika property within the meaning of the 2001 Act cannot be entered into by a Civil Court in view of express bar Section 21 of the said Act, cannot be faulted.

11. The plaintiff/appellant has not claimed any other independent title than occupying the property since his birth, by reason of the fact that his father was a Bharatia.

12. Learned counsel for the appellant, Mr. Wasim Ahmed placed an order dated 27th July, 2022 passed by the Thika Controller in Misc. Case No.72 of 2018 where the Thika Controller has held that since the plaintiff was not a Bharatia, he has no jurisdiction to entertain an

application for eviction of the plaintiff under the provisions of the Thika Tenancy Act of 2001.

13. This Court however has no hesitation, however, to record that since the plaintiff/appellant was claiming rights of occupation of a thika property essentially, and only through his late father, the original Bharatia, the Thika Controller was indeed authorized to decide upon the eviction of the appellant. The order of the Thika Controller dated 29th July 2022 is incorrect. The said proceeding is not under challenge before this Court and cannot be dealt with herein except to the extent indicated above.

14. In view of the discussions hereinabove, this Court is of the view that the decision of a Coordinate Bench in the case of ***Asit Chatterjee Vs. Kanai Lal Das*** dated 21st March, 2022 passed in SA 5 of 2022 has no manner of application in the facts of the case.

15. For the reasons stated hereinabove, this Court finds no infirmity with the impugned judgement and order dated 26th June, 2023.

16. Hence, FAT 257 of 2023 shall stand dismissed.

17. In view of the dismissal of the main appeal, connected pending application, if any, shall also stand dismissed.

18. Interim orders, if any, shall stand vacated.

19. There shall be no order as to costs.

20. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)