

S/L 10
02.03.2023
Court No.652
SD

CO 2038 of 2021

Somnath Chowdhury
Vs.
Smt. Anima Dutt & Ors.

Mrs. Sohini Chakraborty
Mr. Pradyot Kumar Nandi

...for the Petitioner.

Mr. Amrita Lal Dhar

...for the Opposite Parties.

Supplementary affidavit and affidavit-in-reply filed by the parties be kept with the record.

Present application under Article 227 of the Constitution of India has been directed against the order no.97 dated August 31, 2021 passed by the learned Judge, 2nd Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No.150 of 2007 and Ejectment Suit No.153 of 2007 which are heard analogously.

By the impugned order, learned court below was pleased to substitute the legal heirs of plaintiff no.2, Swati Dutt in the cause title of the plaint.

The petitioner contended that originally one Gobardhan Dutt was the absolute owner of several properties including the suit premises and said Gobardhan Dutt prior to his death made and published his last will and testament whereby he appointed his two sons, Brojo Dulal Dutt and Bon Behari Dutt as joint executors of the said will.

After the death of Gobardhan Dutt the said joint executors obtained probate of the said will from this Hon'ble

Court. On January 24, 1995, one of the executors Brojo Dulal Dutt died and on his death the other executor, namely, Bon Behari Dutt used to issue rent receipts to the petitioner. Sometimes in March 1998, the said Bon Behari Dutt also died.

Upon such death of the two executors, Brojo Dulal Dutt and Bon Behari Dutt, Smt. Anima Dutt, the widow of the Brojo Dulal Dutt and Smt. Swati Dutt, the widow of Bon Behari Dutt were jointly looking after the estate and subsequently they were appointed as the joint administrators of the estate of late Gobardhan Dutt by this Court and upon such appointment, the petitioner used to pay the monthly rent to the joint administrators. Subsequently, said Smt. Anima Dutt and Smt. Swati Dutt in the capacity of joint administrators to the estate of Gobardhan Dutt, filed aforesaid two suits for eviction against the petitioner on several grounds.

Swati Dutt was the plaintiff no.2 in the aforesaid two suits who was examined and cross-examination as P.W.1. Sometimes on October 10, 2020, Swati Dutt died intestate during the pendency of the suit and on her death one Bina Roy alleged to be the married daughter of late Swati Dutt filed an application under Order XXII Rule 3 for substituting the name of Bina Roy and Ratna Kaithya in place of deceased Swati Dutt. Learned court below after hearing the parties was pleased to allow the substitution application by passing the impugned order.

Learned counsel appearing for the petitioner submits that the said trial court has erred in passing the said order as the aforesaid suits were filed in the capacity of joint administrators to the estate of late of Gobardhan Dutt appointed by this Hon'ble Court and not in their personal capacity and hence the daughter of Swati Dutt, since deceased, are not entitled to be substituted in place of Swati Dutt as her legal heirs. The court below committed flagrant violation of law in allowing aforesaid prayer for substitution without appreciating that such suit was not filed by Swati Dutt in her personal capacity and thus, the question of substitution of her heirs and legal representatives does not arise. In fact, learned court below without going to the merits of the application has allowed the same only on the ground that it was filed within the period of limitation. Nowhere in the plaint, the original plaintiffs pleaded that they filed the ejectment suit in their personal capacity, being landlord or land lady and for the first time, opposite parties herein are pleading in their affidavit-in-reply that their predecessor issued rent receipt in their personal capacity. Accordingly, she has prayed for setting aside the aforesaid order.

Learned counsel appearing on behalf of the opposite parties by filing certain rent receipts has argued before the court that the rent receipts clearly shows that the tenants were inducted by the predecessor of the opposite parties under their personal capacity and accordingly, they issued

rent receipt in their personal capacity and as such, right to sue survive upon the legal heirs of the deceased Swati Dutt who according to the definition given in the West Bengal Premises Tenancy Act, was a landlord under her personal capacity and as such, trial court rightly substituted legal heirs of Swati Dutt, which does not call for any interference.

Considered submissions made by both the parties.

It is submitted on behalf of the opposite parties that the opposite parties herein as plaintiffs filed an application for amendment wherein they have sought to incorporate in the cause title of the plaint 'land-lady/landlords' before the words 'joint administrators'. It is further submitted that the said application has not yet been disposed of by the court below.

It appears from the plaint that the said suit was filed by Swati Dutt being the widow of late Bon Behari Dutt, describing themselves as joint administrators to the estate of late Gobardhan Dutt appointed by the Hon'ble Court as appearing in the cause title of the plaint.

Learned counsel appearing on behalf of the petitioner also filed rent receipt as Annexure-B dated September 1, 1997 which goes to show that the rent receipt was issued on behalf of late Gobardhan Dutt estate.

Having considered the facts and circumstances of the case, it appears to me that unless and until the prayer for amendment as sought for by the opposite parties/plaintiffs in the cause title of the plaint allowed fact remains that it is a

suit filed by the aforesaid two widows being the administrators as appointed by Court in the estate of Gobardhan Dutt, since deceased. If that be so, the right to sue may not survive upon the legal heirs of deceased Swati Dutt. Accordingly, present application for substitution is premature one and the trial court without considering the merit of the application has substituted legal heirs, against whom right to survive as per description of cause title may not arise, unless it is shown that the suit is filed also under the personal capacity of the landlord.

In view of the above, the order impugned is not sustainable and liable to be rejected.

CO 2038 of 2021 is accordingly allowed and the order no.97 dated August 31, 2021 is set aside.

However, I make it clear that I have not gone into the merit of the question of landlord-tenant relationship between the parties and the trial court will dispose of the amendment application as well as the suit without being influenced by any observation made herein regarding the question of claiming landlordship by the opposite parties.

If the prayer for amendment is allowed by the court below in favour of the plaintiff only then liberty is given to the court below to consider the plaintiff's prayer for substitution afresh without being influenced by any observation made herein.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)