

S/L 8
28.07.2023
Court. No. 29
Sourav

CO 2455 of 2022

**Md. Nasim & Anr.
Vs.
Md. Jamil & Ors.**

Mr. Tarak Nath Halder

...for the petitioners.

1. Petitioners are represented by their learned advocate, Mr. Halder.
2. None appears on behalf opposite parties.
3. In this revisional application, the order dated 17.06.2022 as passed in Ejectment Suit No. 155 of 2015 (373 of 2004) by the learned Civil Judge (Junior Division), Additional Court at Sealdah, South 24 Parganas has been impugned at the instance of the petitioners/defendants. By the impugned order, learned Trial Court allowed the plaintiffs'/landlords' application for amendment of plaint as filed under Order 6 Rule 17 of the Code of Civil Procedure.
4. In course of his submission, Mr. Halder, learned advocate for the petitioners/defendants at the very outset draws attention of this Court to the Annexure 'A' of the instant revisional application being the photocopy of the plaint in the aforesaid suit as filed by the plaintiffs/opposite parties herein. Attention of this Court is also drawn to Annexure 'D' of the instant revisional application being the photocopy of the petition for amendment as filed by the plaintiffs/opposite parties herein before the learned Trial Court. It is contented by Mr. Halder that though

originally the said Ejectment Suit was filed for eviction of the tenants on the ground of reasonable requirement of the plaintiffs under Section 6 of the West Bengal Premises Tenancy Act, 1997 but subsequently, the plaintiffs/opposite parties herein by way of amendment made an attempt to incorporate the provision of Section 2(g) of the said Act of 1997.

5. It is contended by Mr. Halder that while passing the impugned order thereby allowing the petition for amendment, learned Trial Court has failed to visualize that a suit under Section 2(g) of West Bengal Premises Tenancy Act, 1997 is governed under the Transfer of Property Act and, therefore, in a suit for eviction of a tenant under the West Bengal Premises Tenancy Act, 1997, there cannot be any cause of action for eviction of a trespasser, especially when it is the defence case that the defendants in Ejectment Suit No. 373 of 2004 are the joint tenants.
6. I have meticulously gone through the petition for amendment including the schedule of amendment as filed by the plaintiffs before the learned Trial Court. I have also gone through the impugned order.
7. On perusal of the entire materials as placed before me, it appears to me that by way of proposed amendment, the plaintiffs practically made an attempt to incorporate some subsequent events which occurred on account of death of defendant no. 1 as well as on account of the death of original plaintiff no. 1. It further reveals that it was the further case of the plaintiffs that during the pendency of

the said Ejectment Suit No. 373 of 2004, their family members have been increased and, therefore, their requirement have also been increased.

8. In considered view of this Court, the amendment as sought for by the plaintiffs before the learned Trial Court and as has been allowed by the learned Trial Court is very much innocuous in nature and this Court thus considers that if the amendment is allowed to stand, there is no scope on the part of the present defendants/petitioners of suffering any prejudice, since they would get a chance to counter the same by filing their additional written statement which the learned Trial Court has already given to them.
9. So far as the point of maintainability of the Ejectment Suit No. 373 of 2004, the matter is left open for the wisdom of the learned Trial Court and in the event, the present defendants/petitioners raises a suggested issue with regard to the maintainability of the said suit, learned Trial Court is directed to frame issue on the point of the maintainability of the said suit.
10. In view of the discussion made hereinabove, this Court finds no merit in the instant revisional application.
11. Accordingly, the instant revisional application being **CO 2455 of 2022** is hereby dismissed.
12. Consequently, the impugned order dated 17.06.2022 as passed in Ejectment Suit No. 155 of 2015 (373 of 2004) by the learned Civil Judge (Junior Division), Additional Court at Sealdah, South 24 Parganas is hereby affirmed.

13. Liberty is given to the defendants/petitioners of Ejectment Suit No. 373 of 2004 to file their additional written statement within one month from today before the learned Trial Court.
14. Parties as well as the learned Trial Court is directed to act upon the server copy of this order duly downloaded from the official website of this Court.
15. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)