

25.09.2023
Sl. No.19(DL)
srm

C.O. No. 2650 of 2023
Sri Kartick Chandra Sen
Versus
Sri Amitava Sinha & Ors.

Mr. Siva Prasad Ghose

...for the Petitioner.

This Court, does not find any irregularity in the order dated July 3, 2023 passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah in Ejectment Suit No.89 of 2011.

By the order impugned, the learned court below rejected an application for amendment of the plaint, in which the plaintiff/landlord wanted to incorporate the ground of Section 2(g) of the West Bengal Premises Tenancy Act, 1997 for the eviction of the defendants.

According to the plaintiff/landlord, the father (original tenant) died in 1999 and the mother died in 2004. Admittedly, the sons did not have any right to remain in the premises after five years from the death of the father (original tenant).

This Court finds that in paragraph 2 of the plaint, the plaintiff stated that the defendants were statutory tenants after the demise of their father, namely, Haripada Sinha. The suit was filed in the year 2007, when both Haripada Sinha and his

wife had expired. The categorical statement, was that defendants were statutory tenants and had defaulted in payment of rent. The suit had been filed on the ground of default and also on the ground of reasonable requirement. Thus, when there is an admission on the part of the plaintiff that the defendants were statutory defendants, contrary pleas cannot be allowed to be incorporated by way of an amendment. If the amendment is allowed and the ground of eviction under Section 2(g) of the West Bengal Premises Tenancy Act, 1997 is incorporated, not only the nature and character of the suit will change, but an admission on the part of the plaintiff/landlord which has enured to the benefit of the defendants, shall be withdrawn.

The principles laid down by the Hon'ble Apex Court, time and again, do not support such kind of amendment. In the decision of ***Life Insurance Corporation of India vs Sanjeev Builders Private Limited & Anr.*** decided in ***Civil Appeal No. 5909 of 2022***, the Hon'ble Apex Court laid down the principles governing amendment, in paragraph 70 of the decision. The relevant portion is quoted below:-

(iii) The prayer for amendment is to be allowed:-

- (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and
- (ii) to avoid multiplicity of proceedings, provided

- (a) the amendment does not result in injustice to the other side,
- (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and
- (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

With regard to Mr. Ghose's submission that there are statements in the written statement that the defendants continued in the property even after their parents expired and they were claiming through their father are issues which will be decided at the trial, but such amendment for incorporation of the ground for eviction under Section 2(g) of the West Bengal Premises Tenancy Act, 1997 cannot be allowed. This order shall not influence the trial.

The revisional application is accordingly dismissed.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)