

23.6.2023
47
Ct. no. 652
sb

CO 3396 of 2018

Nurjahan Begum & Ors.
Vs.
Sk. Shabbir & ors.

Mr. Sibnath Ganguly
Mr. Argha Banerjee ...for the Petitioners

Mr. Arnab Roy
Mr. Satyam Mukherjee
Ms. Sayani Admed ...for the O.P nos.
1,2,3,18 & 26

This is an application under Article 227 of the Constitution of India against order no. 25 dated 4.9.2018 passed by the learned Civil Judge, Senior Division, Sealdah in Title Suit no. 147 of 2015.

The opposite party/plaintiff nos. 1 to 35 filed aforesaid suit against the petitioners and the opposite party nos. 36 to 40 for partition and accounts and permanent injunction. The petitioners herein as defendant nos. 1(a) to 1(e) appeared in the said suit and filed written statement challenging the maintainability of the suit under the provision of West Bengal Thika Tenancy (Acquisition and Regulations) Act, 2001 and also denied the material allegations of the plaint. Accordingly, the petitioners filed an application under Order XIV rule 1 and 2 of the Code of Civil Procedure with a prayer for dismissal of the suit on the point of maintainability. The opposite party/plaintiffs filed their written objection against the said application. After contested hearing, the

learned trial court, by the impugned order, has been pleased to reject the said application.

Being aggrieved by the said order, the petitioners herein contended that the court below was erred in law as well as in fact and has arrived such a finding. The court below failed to consider that the suit is barred under the provision of West Bengal Thika Tenancy (Acquisition and Regulations) Act, 2001. The learned trial court has failed to consider the aspect that when the defendant/petitioner no. 1(a) to 1(e) has been claiming themselves as only Thika tenant by way of law of inheritance from their father and on the other hand, the opposite party nos. 1 to 35 has been claiming Thika tenancy right, from their predecessor, the learned trial court has no jurisdiction to adjudicate the dispute as to who is the Thika tenant and the learned trial court ought to have held that under the existing law, the Thika controller is the statutory authority to adjudicate the dispute relating to the Thika tenancy. In fact, the court below wrongly decided that the learned Civil Judge has jurisdiction to decide the issue and he has wrongly rejected the petitioner's application about the maintainability of the suit.

The petitioners, in this context, has relied upon judgment in the case of **Saghira Bano Vs. Mahmood Alam & ors.** reported in **2020 (1) Indian Civil Cases 219** and **Samarendra Nath Das @ Samar Das vs. Bengal**

**Central Building Society Limited reported in 2015(5)
CHN (CAL) 23.**

Learned counsel for the opposite parties submits that on perusal of the plaint, it appears that the plaintiff has simply prayed for passing preliminary decree of partition ascertaining their respective share in the suit property and for final decree of partition and for appointment of accounts commissioner along with injunction and other reliefs.

In view of above, it is quite clear that the plaintiffs have prayed for determination of co-sharership in respect of the suit property and there is no prayer for determination of Thika tenancy and as such the suit is very much maintainable before the Civil Court under Section 9 of the Code of Civil Procedure, since it is not in dispute that Hazi Sukhoo is the predecessor in interest of all the parties in the suit.

I have considered the submissions made by both the parties. According to the plaint case, the suit property originally belonged to predecessor in the interest of the parties namely, Hazi Sukhoo and after his death, his legal heirs i.e. parties in the suit have inherited share in the property and as the defendants along with outsiders are trying to disturb plaintiff's enjoyment in the property, so the plaintiffs filed the present suit. On the contrary, the defendants' specific contention is that Hazi Kuddus the son of Gulam Rasool and grandson of aforesaid Hazi

sukhoo was the sole Thika tenant in respect of the suit property, who died intestate in 2016 leaving behind present contesting defendants as legal heirs and successors of the suit property. He further contended that the plaintiff nos. 4 and 5 have admitted said Hazi Kuddus as their landlord/Thika tenant by paying monthly rent to the said defendants. Moreover, the record of rights stands in the name of Hazi Kuddus as sole Thika tenant and said Hazi Kuddus during his lifetime, had been paying the Government rent before the Thika Controller by challan. Said Hazi Kuddus during his lifetime, has mutated his name before the Kolkata Municipal Corporation and had been paying the corporation taxes regularly. The plan was also sanctioned by the Kolkata Municipal Corporation in the name of Hazi Kuddus and accordingly, the Bharatias who are residing therein have admitted Hazi Kuddus as their landlord and had been paying monthly rent to Hazi Kuddus and now to the defendants.

In view of aforesaid defence submitted by the contesting defendants, it appears that the main question which is required to be adjudicated first in the present dispute is whether Hazi Sukhoo was the original Thika tenant in respect of the suit property and after his death, all his legal heirs namely parties in the suit have inherited the suit property or Hazi Kuddus, one of the grandson of Hazi Sukhoo, was the sole Thika tenant in respect of the suit property and after his death only his

legal heirs i.e. the present petitioner/contesting defendants became sole Thika tenant in respect of the suit property. The plaintiffs claim of co-sharership and partition will stand only when it could be decided that Hazi Kuddus was not the sole Thika tenant but Hazi Sooko was the original Thika tenant in respect of the suit property. Accordingly, the issue of determination of Thika tenancy i.e. whether Hazi Sooko was the original Thika tenant or Hazi Kuddus was the sole original Thika tenant in respect of the suit property, is required to be determined and as such, the civil court has no jurisdiction to decide the said issue, in view of Section 5(3) of the West Bengal Thika Tenancy (Acquisition and Regulations) Act, 2001 which provides if any question arises as to whether a person is a Thika tenant or not, such questions shall be heard and disposed of by the controller. Said settled proposition of law has been reiterated in Saghira Bano Case (supra) and Samarendra Nath Das @ Samar Das (Supra).

In view of above, the order impugned being order no. 25 dated 4.9.2018 is hereby set aside. C.O. 3396 of 2018 is accordingly allowed. The present suit in the present form is not maintainable before the civil court. However, this order will not preclude the parties to approach before the appropriate authority for determination of their right title and interest in the suit property, subject to law of Limitation.

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

(Ajoy Kumar Mukherjee, J.)