

06.12.2023
Court No. 19
Item no.13
CP

C.O. No. 3279 of 2022

Shantilata Hazra & Ors.

Vs.

Sri Aloke Saha & Anr.

Mr. Debdipto Banerjee
Mr. Soumen Banerejee

.....for the petitioners.

The revisional application has been filed against an order dated July 28, 2022, passed by the learned Civil Judge (Junior Division), 2nd Court, Sealdah in Ejectment Suit No. 02 of 2006.

By the order impugned, the learned court rejected the application filed by the petitioners under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'the said Act'). The learned court held that the relationship of landlord and tenant between the petitioners and the plaintiffs had been established. The learned court further held that the petitioners were not defaulters. The petitioners are aggrieved by the determination of the relationship between the parties on the following grounds: -

- a) The original owners were Bimal Laskar and Amal Kumar Laskar (hereinafter referred to as 'Bimal and Amal'). The father of the petitioners' was originally inducted as a

tenant in the suit property. Subsequently, upon the death of Kalipada Hazra, (the original tenant), the petitioners became the tenants under Bimal and Amal,

- b) The sale of Amal's share (Lot –A) in favour of Alope Saha (hereinafter referred to as 'Alope') by deed of conveyance dated September 19, 2023 was not sustainable in law as there was no partition of the property between Bimal and Amal.
- c) Had there been a proper partition of the property between Bimal and Amal, a partition deed would have been produced before the court which was not done.
- d) When there was no partition of the property, the question of Amal transferring his share (Lot A) in favour of Alope would not arise.

In view of the above, the notice to quit issued by Bimal and Alope (subsequent purchaser) was defective and there was no relationship between the petitioners and Alope.

The learned court failed to take into account that non-production of the partition deed would give rise to a presumption that Alope could not be treated as a landlord as the deed of conveyance executed by Amal in his favour was doubtful and not free from

challenge, without any partition of the property between the erstwhile owners Bimal and Amal.

Having considered the contentions of Mr. Banerjee, learned advocate for the petitioners, this court finds that the learned Trial Judge had taken into account the original purchase deed, the tax bills and the oral evidence adduced by the parties. The learned court has elaborately discussed the contents of the deed of conveyance.

The fact that the tenanted portion also falls within Lot – B (Bimal's share) is not in dispute. The municipal holding numbers in the tax bills in respect of Bimal's share, according to the court, indicated that there was bifurcation of the holdings and separate holding numbers had been allotted, i.e., the original holding number was 50/1, Gouri Bari Lane and the present holding number in respect of Bimal's share is 50/1B, Gouri Bari Lane. The learned court held that the deed of conveyance established that the title had passed from Amal to Alope.

Even if the petitioners' contention that the partition deed was not produced before the court is correct, both Amal and Bimal have filed the suit for eviction. Bimal has accepted Alope's title and Alope to be a co-owner of the original premises no. 50/1, Gouri Bari Lane in respect of which the petitioners were tenants.

Subsequent tax bills also indicate separate holding numbers were allotted in respect of the premises. The legality of the partition cannot be challenged by the petitioners in this proceeding and, in any event, the petitioners do not deny Bimal to be one of the landlords. One landlord can also bring a suit for eviction against the petitioners.

Thus, the order impugned does not call for any interference. The revisional application is dismissed.

The other issues which have been raised by the petitioners in the written statement shall be decided, in accordance with law, upon trial.

However, there shall be no order as to costs.

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

(Shampa Sarkar, J.)