

18.09.2023
Sl. No.7(DL)
srm

C.O. No. 3360 of 2022
Wasique Ahmed & Ors.
Versus
Md. Yunus & Ors.

Mr. Sib Nath Ganguly

...for the Petitioners.

The revisional application has been filed by persons who claim to be owners of a property in respect of which Ejectment Suit No.73 of 2019, is pending before the learned Civil Judge (Junior Division), 1st Court at Sealdah. The suit has been filed allegedly by a licensee of the petitioners, against whom Title Suit No.11 of 2012, is pending before the learned Civil Judge (Junior Division), 1st Court at Sealdah. The petitioners had filed the said suit for eviction of licensee.

It is submitted by the petitioners that the application for addition of party filed in Ejectment Suit No.73 of 2019 ought to have been allowed for proper and complete adjudication of the dispute between the parties. The petitioners claim to be the owners of the property in question. The suit is one for eviction of trespasser under Section 2(g) of the West Bengal Premises Tenancy Act, 1997. The plaintiff/opposite party No.1 prayed

for eviction of the defendants/opposite party Nos.2 and 3 from the suit property on the ground that after expiry of five years from the demise of the original tenant, the said defendants had become trespassers.

The learned court rejected the application. The court found that the petitioners, who prayed for being impleaded in the suit as owners of the property, only relied on one tax receipt and a sale deed. The court held that the tax receipt was not a, *prima facie*, proof of title and from the sale deed, the chain of title could not be established. On the other hand, the plaintiff in the suit filed documents to show that proceedings were pending before the learned Thika Controller for determination of tenancy right and they had been paying ground rent to the Thika Controller on *ad hoc* basis. According to the learned court below, whether the opposite party No.1 was the owner of the suit property or not, would be decided as one of the issues. The onus was upon the plaintiff to prove that he had the right, title and interest in respect of the property in question and if the plaintiff failed to establish the same, he would suffer the consequence of failure of the suit.

In the written statement filed by the opposite party Nos.2 and 3, who are the defendants in ejectment suit no.74 of 2019, the defendants have questioned the right, title and

interest of the opposite party No.1. They have denied that the said opposite party No.1 was their landlord and also stated that the petitioners were the owners of the suit property.

In the suit for eviction, the jural relationship between the landlord and the tenant will be decided. The landlord may or may not be the owner. Moreover, the question of title shall not be decided in this suit. The landlord has to establish a better title than the tenant. Reference is made to the decision of *Kanaklata Das and Others vs Naba Kumar Das and Others* reported in (2018) 2 SCC 352, the relevant portion is quoted below:-

“10. In other words, we are inclined to dismiss the application filed by Respondent 1 under Order 1 Rule 10(2) of the Code in the appellants' ejectment suit.

11. There are some well-settled principles of law on the question involved in this appeal, which need to be taken into consideration while deciding the question which arose in this appeal. These principles are mentioned infra:

11.1. First, in an eviction suit filed by the plaintiff (landlord) against the defendant (tenant) under the State Rent Act, the landlord and tenant are the only necessary parties. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.

11.2. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff landlord has sought defendant

tenant's eviction under the Rent Act exists. When these two things are proved, the eviction suit succeeds.

11.3. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See *Ranbir Singh v. Asharfi Lal* [*Ranbir Singh v. Asharfi Lal*, (1995) 6 SCC 580] .)

11.4. Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. (See *Ruma Chakraborty v. Sudha Rani Banerjee* [*Ruma Chakraborty v. Sudha Rani Banerjee*, (2005) 8 SCC 140] .)

11.5. Fifth, a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. (See *Udit Narain Singh Malpaharia v. Board of Revenue* [*Udit Narain Singh Malpaharia v. Board of Revenue*, AIR 1963 SC 786] .)”

The decision cited by Mr. Ganguly, learned Advocate for the petitioner, in the matter of Suparna Paul & Anr. vs. Dipak Dutta & Ors. reported in 2023(2) Indian Civil Cases 1003 (Cal), is not applicable as the suit was not one for eviction. The suit was for declaration and payment of compensation. The case is distinguishable on facts as the heirs of the defendants against whom the money claim had been made in the plaint were not added as parties by the learned trial judge. In the revisional application, a coordinate Bench found that the right to sue survived against the heirs of the defendant No.8. The subject matter of the suit was the alleged agreement entered into between the plaintiff and the defendant No.8. Any liability of the defendant No.8 to pay a quantum of money to the plaintiff would devolve upon the heirs. Thus, the heirs had a right to contest such proceeding and defend themselves, to avoid a decree for payment of compensation which was claimed against their predecessor.

In the case in hand, the petitioners have already filed a suit for eviction of the opposite party No.1 which is pending before the learned court below. The ejectment suit is also pending before the same court. In the facts of the case also, the learned court below did not find any reason for addition of the petitioners.

I do not find any perversity in the order impugned, as the learned court below, on consideration of the facts and documents, came to the conclusion that the petitioners were neither necessary party nor proper party. A necessary party is one, in whose absence the decree cannot be passed. This is not a case in which the eviction suit cannot be adjudicated in the absence of the petitioners. A proper party is one, in whose absence a decree may be passed, but whose presence would be required for proper adjudication of the dispute between the parties. In the facts of the case, the dispute is whether the opposite party No.1/landlord could evict the opposite party Nos.2 and 3 in terms of Section 2(g) of the West Bengal Premises Tenancy Act, 1997. It also appears that both the suits, i.e., that the suit filed by the petitioners and the suit filed by the opposite party No.1 are pending before the same court. The petitioners did not pray for analogous hearing of both the suits.

The revisional application is, thus, disposed of.

There shall be no order as to cost.

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

(Shampa Sarkar, J.)