

5.9.2023
68
Ct. no. 652
sb

CO 3502 of 2015

**Trust Estate Founded on 25th Ashwin 1332
B.S. rep. by Sri Adinath Mondal & Anr.
Vs.
Chiranjit Mitra & Ors.**

Mr. Sabyasachi Mukhopadhyay
Ms. Soumi Pal
Ms. Koushikee Banerjee ...for the petitioners

Mr. Ayan Banerjee
Ms. Debjani Sengupta ...for the O.P no. 1

Being aggrieved with the order no. 98 dated 24.6.2015 passed by the learned Civil Judge (Junior Division), 1st Court, Asansol in Title Suit no. 169 of 2005, the present application under Article 227 of the Constitution of India has been preferred.

The petitioners submit that the petitioner is a trust estate established in 1332 B.S. by one Rakhal Chandra Mondal. The petitioners as plaintiffs filed aforesaid suit for eviction against the defendant/opposite parties stating that the defendants are occupying the suit premises at a monthly rent of Rs. 75/-. It is further contended that originally Late Anil Kumar Mitra was monthly tenant in respect of the suit premises and he died as bachelor. After his death his brothers and sisters as legal heirs inherited his tenancy right. In the said suit, it has further been contended that the defendants are habitual defaulter in

payment of rent and as such the suit for eviction was filed against the defendants. The defendant no. 1, 3, and 5 /opposite parties herein appeared in the said suit and filed an application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 contending that there is no relationship of landlord and tenant in between the plaintiffs and the defendants and the defendants are in possession of the trust property and has been paying municipal taxes. However, the defendants in the said application contended that even it is found that they are tenants in respect of the suit premises, they may be permitted to deposit arrear rent in forty equal monthly instalments.

The petitioner herein contested the said application by filing written objection and contended that the defendant/opposite parties herein are joint monthly tenants in respect of the suit premises and they are paying monthly taxes as occupier. Both the parties adduced evidence before the court below. Learned court below had taken up such application for hearing and after contested hearing, learned court below by the impugned order, observed that there is no relationship of landlord and tenant in between the plaintiffs and the defendants and accordingly the defendants are not required to deposit any rent before the court.

Being aggrieved by that order, it is submitted on behalf of the petitioners herein that the

defendant/opposite party's witness namely, PW 1 has admitted in his cross examination that Anil Kumar Mitra was the previous tenant with respect to the suit property and he died as bachelor leaving behind his brothers and sisters as his legal heirs. The opposite parties herein did not file any document in support of their claim of title in the suit property. On the contrary, the petitioner/plaintiff filed rent receipts which go to show that the opposite parties herein are the tenant in respect of the suit property. Learned court below erroneously held that PW-1 denied his signature in the counter foil. Neither the petitioner nor the opposite parties produced their documents in support of their title but as the plaintiff/landlord only filed CS and RS record of right in their names with respect to the suit property, the court below came to a conclusion that those documents are not documents of title but documents in support of possession and as such, there exists no relationship of landlord and tenant in between the parties.

Learned counsel for the opposite parties filed affidavit-in-opposition to the supplementary affidavit contending that predecessor-in-interest of opposite party, Late Bibhuti Bhusan Mitra, father of Anil Kumar Mitra have purchased the property long back on 1st July, 1958 and they are also paying monthly taxes from time to time and as such they cannot become a tenant in respect of the suit property. In fact, petitioner is not the owner of

the suit property after such purchase. He however submits that his document of title, photocopy of which annexed with the supplementary affidavit herein, was not produced at the time of adducing evidence and as such liberty has been sought for by the defendants so that they may prove their title in the suit property before the court below.

On perusal of the copy of the evidence adduced by the PW 1, it appears that PW 1 in his deposition has admitted that it is true that Anil Kumar Mitra was a tenant in respect of the suit premises under the plaintiff trust. Anil Kumar Mitra was a Bachelor tenant and died leaving behind his two brothers and sisters as his legal heirs. On the contrary, The defendant's contention is that they are not tenants in respect of the suit property but they are owners.

Learned court below while passing the impugned order held that PW-1 denied his signature on counter foil. It is submitted by petitioner that counter foils do not bear the signature of defendants, so question of denial does not arise and it is further submitted on behalf of petitioners that Section 4 or 5 of the Act of 1997 do not speak about necessity to put signature by defendant/tenant on the rent receipt and it is sufficient if it bears signature of landlord.

After making an observation that neither party submitted document of title with respect to the suit

property and both the parties submitted documents in support of possession indicating towards presumption of title, in the order impugned, court below created a mystery by stating that by admitting the tenancy of Anil Kumar Mitra, the defendants/petitioners have not admitted themselves as the tenants with respect to the suit premises and are no way burdened to establish that they are not the tenants with respect to the suit premises, in one hand and observing on the other hand that petitioners nowhere claimed that they were residing within the suit premises as dependent of aforesaid Anil Kumar Mitra and as such under the definition of “tenant” as provided in Section 2(g) of the Act of 1997, petitioners cannot be regarded as tenant and as such they are not required to deposit any rent before the court.

However, since both the parties have expressed their willingness to produce further evidence in support of their respective contentions and this court while exercising supervisory jurisdiction is not sitting as an appellate court and thus precluded from reassessing or revaluating the evidence that has already been brought or has been sought to bring, which task is entrusted to the court below, the order impugned dated 24.6.2015 is hereby set aside. Learned court below is directed to hear the defendants/tenants application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 afresh within a period of twelve weeks from the date of

communication of the order after giving opportunity to both the parties to adduce further evidence if any, in support of their respective contention of ownership and/or tenancy.

C.O. 3502 of 2015 is accordingly disposed of.

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

(Ajoy Kumar Mukherjee, J.)