

18th December, 2023
(D/L No.26)
(SKB)

C.O.3947 of 2023

Swapan Banerjee and another
Versus
Purnima Nag and others

Mr. Anirban Mitra,
Mr. Amit halder,
Mr. Amit Roy,
Ms. Madhumita Sadhukhan
... for the petitioner

This revisional application arises out of an order dated 22nd September, 2023 passed by the learned Civil Judge (Junior Division), 1st Court at Basirhat, North 24-Parganas. An application under Section 151 of the Code of Civil Procedure was filed in connection with the T.S. No.152 of 2015. The application was rejected. Such application was filed by the plaintiffs in the suit, seeking incorporation of Section 2(g) of the West Bengal Premises Tenancy Act, 1997, as a ground for eviction.

The plaintiffs stated that due to a subsequent change in the law, the defendants should be treated as trespassers in terms of Section 2(g) of the said Act. After five years from the death of the original tenant, the defendants did not have any right to remain in the premises. They had become trespassers.

The learned court below rejected the said application on the ground that the landlord had collected the rent from the defendants, by recognizing

them as tenants and the prayer was barred by the principle of estoppel.

Mr. Mitra, learned advocate appearing on behalf of the plaintiffs/petitioners submits that the order suffers from material irregularity. The question of estoppel would not arise. Plaintiffs wanted to incorporate an additional ground for eviction, in the pending suit.

Having perused the plaint, it appears that the suit was filed for eviction of the defendants and for recovery of khas possession.

In paragraph 3 of the plaint, it has been categorically stated that the defendants paid rent up to the month of 'Poush', 1407 BS and thereafter refused to pay rent. The plaintiffs repeatedly asked the defendants to pay rent, but since month of 'Magh', 1407 BS, rent was not being paid. Further contention is that the plaintiffs require the tenanted premises for their own use and occupation. It has been alleged that the defendants are habitual defaulters and they have also constructed on the property, thereby diminishing the quality of the tenanted premises. The plaintiffs have prayed for *mesne profit*, costs etc.

The defendants have denied the allegation of default and have averred in the written statement that the defendants are monthly tenants in respect of the premises-in-question. That the defendants have not

locked up the premises, but were using the same. That the defendants improved the quality of the property, by replastering the premises at their own cost. The rent is being deposited with the rent controller.

The plaintiffs have averred that the defendants are tenants and are not paying rents despite several requests by the landlord. On account of such admission, a right has accrued in favour of the tenants and they can claim to be premises tenant. Allowing incorporation of Section 2(g) of the said Act in the said plaint, would amounts to introducing a new case and a new cause of action. A suit for eviction of a premises tenant, will be transformed into a suit for eviction of trespasser. The suit has been filed on the ground of default and reasonable requirement. The father of the defendants long ago, much before the suit was filed.

It would have been a different case altogether, if the original tenant was a defendant in the suit and passed away during the pendency of the suit and the other defendants being the children, had remained in the property and continued to do so after expiry of five years from the date of death of the deceased. In such a situation, Section 2(g) could have incorporated by way of an amendment. It would be a subsequent cause of action.

An application under Section 151 of the Code of Civil Procedure cannot be allowed to amend the plaint, by incorporation a new case, different from the original one. This would not only amount to withdrawal of admission but also introduction of inconsistent pleas.

The observations of the learned trial judge, will not influence the further proceedings in the suit.

The revisional application is accordingly dismissed.

There will be no order as to costs.

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

(Shampa Sarkar, J.)