

AD-01
Ct No.01
Jalpaiguri
09.02.2023
TN

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CO 62 of 2022

Surajit Kumar Das and others
Vs.
Basanti Banik and others

Mr. Kushal Chatterjee
....for the petitioners

Mr. Kunaljit Bhattacharjee,
Mr. Alok Sah
....for the opposite party nos.1 to 7

Learned counsel for the petitioners contends that the learned Trial Judge acted palpably without jurisdiction in refusing the petitioners' prayer for repair of the premises, regarding which the petitioners claim tenancy, primarily on the ground that extensive renovation, and not mere repair, of the suit premises would be required.

Learned counsel for the petitioners submits that although the petitioners' suit for declaration of tenancy right was dismissed, the present appeal is pending against the said judgment and decree. That apart, at least as far as the petitioner no. 4 (widow of the deceased tenant) is concerned, it is

nobody's case that she is residing elsewhere than the premises-in-question.

As such, it is argued that the prayer for repair ought to have been allowed.

Learned counsel for the defendants/opposite parties, who are respondents in the pending appeal, controverts the contentions made by the petitioners. It is submitted on the basis of the findings of the learned Trial Judge while passing its judgment, that as per the admission of all the legal heirs of the deceased original tenant, they are residing elsewhere than the suit property. Learned counsel for the opposite parties further argues that it is evident from the judgment and decree of the trial court as well as the findings arrived at by the trial court and the appellate court that the petitioners are not in possession of the suit property at all and, as such, are not entitled to renovate the suit property at this juncture.

Upon hearing learned counsel for the parties, it transpires that the primary subject-matter of challenge in the appeal is whether Section 2(g) of the West Bengal Premises Tenancy Act, 1997 operates in favour of the petitioners in order to confer tenancy on the petitioners upon the demise of the original tenant, their predecessor-in-interest.

As it transpires from the findings of the trial court, the P.W.1 in his evidence categorically admitted that the present petitioner no.4 (widow of the original deceased tenant) is also residing with the said P.W.1 at Falakata, away from the suit property.

Hence, it is evident that it is doubtful as to whether the petitioners have even a *prima facie* case of possession in the appeal.

That apart, there is nothing on record to indicate even any averment having been made by the present petitioners to the effect that the petitioners have been residing at the relevant juncture, that is, the demise of the original tenant, at the suit premises.

Although the ground on which the repair application has been refused by the appellate court is not sound in law, inasmuch as extensive renovation is also permitted as there is no bar in law to do so, in the circumstances of the present case, this court is not satisfied about the possession and the right of the petitioners to carry out repairs at the suit property. Moreover, it is clear from the Commissioner's report, duly considered by the appellate court below, that the condition of the property is extremely dilapidated,

which also rules out the present human habitation therein.

In view of the circumstances, there is no scope of setting aside the order of the learned appellate court under Article 227 of the Constitution of India as the conclusion of the appellate court was correct in law.

In such view of the matter, CO 62 of 2022 is dismissed without any order as to costs. However, none of the observations made herein shall prejudice the hearing of the appeal and/or the rights and contentions of the parties on merits at the final hearing of the appeal.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)