

26th February, 2024
(D/L No.35)
(SKB)

FMA 213 of 2024
With
IA NO: CAN 1 of 2024

Pushpa Garg
-Versus-
Binod Kumar Khaitan and others

Mr. Piyush Chaturvedi
... for the appellant/petitioner.

Mr. Partha Pratim Roy
... for the respondents/opposite parties.

1. Heard learned counsel for the parties.
2. The present appeal arises out of an order passed on 22nd December, 2023 on a petition filed by the legal heir of the original defendant(tenant) under Order XXI Rule 97, 99 and 101 of the Code of Civil Procedure. In the said proceeding, interim injunction was sought for by the present appellant/petitioner on the ground that she, being the widow of the original defendant(tenant) and the original defendant having died prior to the institution of the suit, is entitled to reside in the property as a tenant being the widow of the original defendant(deceased tenant) and, in her absence, the tenanted property has been put under lock and key.
3. Learned counsel for the respondents/opposite parties submits that the decree has already been executed in

the meantime and the copy of the said order to that effect is shown to us.

4. The question is now whether the petition filed by the present appellant/petitioner being the widow of the original defendant(deceased tenant) could have been dismissed on the ground that the original defendant had appeared in the suit on 19th February, 2015 and the name of the present petitioner/appellant does not tally with the name in the death certificate issued in respect of deceased tenant by the competent authority of the State of Arizona in the U.S.A.
5. Learned counsel for the appellant/petitioner submits that the maiden name of the appellant/petitioner is Pushpa Chandak, which is recorded in the death certificate issued by the State of Arizona in the U.S.A. according to their extant Rule/Scheme but the name of the appellant/petitioner after marriage is Pushpa Garg.
6. According to our considered view, such a variance in the surname only should not have weighed heavily in the mind of the learned court below when the question of existing tenancy and asserting of right, title and interests over the property by the appellant/petitioner are there in the pleadings on the ground of succession to the interest of her deceased husband over the suit property as the tenant.

7. So far as the observation of the learned court below regarding appearance of the original tenant on 19th February, 2015 is concerned, that being a matter of record would be found out in the ejectment suit.
8. We, therefore, dispose of this appeal after setting aside the impugned order directing the learned executing court to dispose of the petition filed by the appellant/petitioner under Order XXI Rule 97, 99 and 101 of the C.P.C. being Misc. Case No.7558 of 2023 on merit after affording opportunity of hearing to learned counsel for the parties. Learned counsel for the parties undertake to appear before the learned executing court on 10th April, 2024 being ready with all the materials with them and the proceedings shall be concluded within three months from the date of appearance of the parties i.e. 10th April, 2024.
9. It is made clear that we have expressed no opinion about the merit of the claim of the appellant/petitioner or that of the plaintiff so far as the proceeding under Order XXI Rule 97,99 and 101 of the C.P.C. is concerned.
10. Learned executing court is free to decide the matter on the basis of the pleadings and arguments made by the counsel for the parties and dispose of the same on merit.

11. The parties are directed to maintain status quo as on date so far as the decreetal property is concerned.
12. Learned counsel for the appellant/petitioner submits that the appellant/petitioner has some belongings in the decreetal property under lock.
13. If petition to that effect is filed by the appellant/petitioner before the learned executing court, the learned executing court, if so pleased, may pass an order of inventory of the said belongings of the appellant/petitioner, if at all, in the presence of both the parties and their counsels on a date fixed by the learned executing court. But the power is purely discretionary on the learned executing court on filing of petition by the appellant/petitioner and the above observation is not an order.
14. The appeal and the connected application are, accordingly, disposed of.
15. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)