

19.02.2024  
Sl. No.53(DL)  
srm

**C.O. No. 221 of 2023**  
**Goutam Kumar Das & Ors.**  
**Versus**  
**Dulal Chandra Modak & Ors.**

Mr. Sukumar Ghosh,  
Ms. Moumita Ghosh

...for the Petitioners.

1. Despite service, none appears on behalf of the opposite parties. On the last occasion, learned Advocate appeared on behalf of the opposite party Nos.8 to 12 who is not before this Court. Affidavit-of-service is taken on record.
2. The subject matter of challenge in this revisional application is the order dated December 1, 2022 passed by the learned Civil Judge (Junior Division), Additional Court, Chandernagore, Hooghly, in Title Suit No.84 of 2021.
3. By the order impugned, the learned court below rejected an application for addition of parties filed by the plaintiffs. The learned court was of the view that the application to bring on record the heirs of Amullya Charan Modak should not be entertained by the court in view of the fact that the defendant had become the absolute owner of the property, on the basis of a registered partition deed

executed between the defendant and his brothers, *i.e.*, Deed No.2793/2001. The application was filed only to introduce new facts in the suit. The suit property had fallen in the share of the defendant who had acquired absolute right, title and interest thereon. The petitioners are the substituted heirs of the original plaintiff.

4. The original plaintiff filed a suit for declaration and injunction against Dulal Chandra Modak with the following prayers:-

“(A) For a decree for declaration that he has got tenancy right over the suit premises under the defendant at a rental of Rs.45/- per month according to Bengali Calendar month and for a further declaration that defendant has got no right to evict the plaintiff forcibly and illegally without following the due process of law.

(B) For a decree for permanent injunction restraining the defendant from disturbing or interfering with the peaceful possession of the plaintiff over the suit premises in future and an ad interim order in similar terms during the pendency of the suit.

(C) For all cost of the suit.

(D) For such other relief to which the plaintiff is legally and equitably entitled to.”

5. The plaint case is that Amullya Charan Modak had inducted the erstwhile plaintiff as a tenant in the suit property. After demise of Amullya Charan Modak, his wife Pankajini Modak used to collect the rent. Thereafter, Harihar Modak and Dulal Modak used to collect the rent. Later, none came to claim the rent. Suddenly, in the 2<sup>nd</sup> week of February, 2021, the plaintiff received a notice from the learned Advocate of the defendant in which the plaintiff was mentioned to be a 'licensee'. It was stated in the said notice that the plaintiff had been inducted as a licensee for 15 years i.e. from the month of January, 2005. By the said notice, the defendant threatened the plaintiff and asked him to quit and vacate the premises. The notice dated February 9, 2021, had cast a cloud on the tenancy right of the plaintiff and as such the suit was filed for a declaration that he was not a licensee, but a tenant in respect of the suit premises under the defendant. Injunction was accordingly prayed for. The plaintiffs have been substituted, as the original plaintiff expired.
6. The plaint case and the cause of action, as framed, arise out of the notice issued by the defendant through the learned Advocate dated February 9, 2021, which was received on February 18, 2021. As the notice to quit and vacate had cast

as a cloud on the tenancy right of the predecessor of the plaintiffs, the suit was filed for declaration of tenancy against the defendant.

7. In such a suit, the other brothers and sisters of the defendant who are not connected with the notice issued to the plaintiff and against whom there is neither any claim nor allegation in the suits should not be added. There is a specific averment that the erstwhile plaintiff was a tenant under the defendant and a declaration to such effect has also been claimed.
8. Accordingly, this Court does not find any illegality in the order impugned.
9. The revisional application is, thus, dismissed.
10. There will be, however, no order as to costs.
11. Parties are to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**