

AD27  
20.05.2024  
Court. No. 19

CO 1131 of 2024

*Smt. Parvati Devi*  
*vs.*  
*Purshottam Das Kejdiwal and Ors.*

Mr. Kushal Chatterjee  
Mr. Oishik Chatterjee  
Ms. Kalpana Singhanian

... for the petitioner

The revisional application arises out of an order dated February 6, 2024. passed by the learned Judge, XIII bench, City Civil Court at Calcutta. By the order impugned, the learned Court rejected an application filed by the petitioner under Order 1, Rule 10(2) of the Code of Civil Procedure.

Mr. Kushal Chatterjee, learned Advocate, appearing on behalf of the petitioner submits that the order impugned does not indicate the ground for rejection of the application for addition of party. It is further submitted that the said order has been passed by taking into consideration extraneous issues. The Aadhaar card, the demography, the biometrics, etc., were irrelevant to the context.

All that the learned Court was required to see was whether Purshottam's widow should be added as a party to the proceeding or not. Mr. Chatterjee's contention is that as the High Court had protected Parvati Devi's right to the property, her addition was

necessary in order to establish that the defendant No.1 also had the right to occupy the premises along with the mother. Unless the mother was added as a party, she would not be able to establish her right in respect of the premises in question and accordingly, her son's right to continue to be in possession in the premises would also not be established.

Mr. Sen, learned Advocate appearing on behalf of the plaintiff submits that the High Court had already protected tenancy of Parvati Devi in respect of the premises in question, in FA 171 of 2017. The relevant portion is quoted below:

“In view of the aforesaid decisions which clearly affirms the view that even if the original tenant dies prior to introduction of 1997 Act, benefit of five years is given to the person mentioned in Section 2(g) of the West Bengal Premises Tenancy Act, 1997. In the instant case, the said benefit was available to the appellant no.1 for five years. However, the tenancy right of Parvati Devi is adequately protected by the said section. Admittedly, she is not a party to the aforesaid proceeding.

In view thereof, the appeal succeeds. The order of the learned Trial Court is set aside.

However, we remand this matter to the learned Trial Court to decide all other issues excepting the issues which are already decided, keeping in mind the ratio as decided in the case of Satyanarayan More (supra).

The application for amendment of the plaint is accordingly, sent down to the learned Trial Court for disposal in accordance with law. The department is directed to send down the application for amendment of the plaint to the learned Trial Court in terms of our order.

It is needless to mention that the decision binds only to the parties who are before us. It shall be presumed that the other respondents are not willing to contest this appeal and, as

such, there is no requirement of service of notice of appeal against the said respondents.

FA 171 of 2017 is accordingly disposed of.

In view of the aforesaid observations, FA 173 of 2017 is also disposed of.”

Mr. Sen, submits that when the issue of tenancy of Parvati Devi had been decided by the High Court, the suit should proceed on other issues and it would be for the plaintiff to prove that the defendant No. 1 did not have any right to reside in the premises in question. If the plaintiff discharges such onus, it will be for the defendant to establish his right, either through Parvati Devi or otherwise.

Mr. Chatterjee's contention that unless Parvati Devi was added in the proceedings, the provisions of 2(g) of the West Bengal Premises Tenancy Act 1997 could not be interpreted in its correct perspective, is not accepted by this court.

The Division Bench of the High Court, upon application of mind and upon hearing the appeal, held that the tenancy of Parvati Devi, upon application of section 2(g), was not disputed and the issue had been decided in her favour. Thus, the tenancy of Parvati Devi would not be an issue in the suit. Whether her son was a tenant or not or whether the son could be in possession of the property, are matters of trial, to be decided in the suit.

In any event, if the son wants to draw support from his mother, he is entitled to produce his mother as a witness.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

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

**(Shampa Sarkar, J.)**