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10.12.2024
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 1215 of 2024

Gobinda Mahato & Ors.
Versus
Tara Begum

Mr. Falguni Bandopadhyay
Mr. Soumen Ghosh
Ms. Sreetama Neogi
Mr. Riyan Ballav

... For the petitioners.

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das
Mr. Sounava Santra

... For the opposite party.

1. The present revisional application has been filed inter alia challenging the order dated 6th February 2024 passed by the learned Civil Judge (Junior Division) 3rd Court, Howrah in Title Suit No. 1662 of 2022 thereby rejecting the plaint filed under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908.
2. Mr. Banerjee, learned advocate appearing in support of the revisional application by drawing attention of this Court to the statements made in the plaint would submit that the plaintiff has suppressed the fact that the suit schedule property is a thika property. He would by placing before this Court the provisions of Section 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001

(hereinafter referred to as the “said Act”) submit that the Civil Court is incompetent to determine any question which can be decided by the controller. By referring to the provisions of Section 5(3) of the said Act he would submit that as to whether a person is a thika tenant or not or whether the land in question is a thika land is required to be decided by the controller. He would submit that notwithstanding the aforesaid fact being brought to the notice of the learned Court, the Court failed to exercise the jurisdiction vested in him in rejecting the plaint under the provision of Order VII Rule 11 of the Code of Civil Procedure.

3. Mr. Mukherjee, learned advocate enters appearance on behalf of the opposite party. He would submit that the statements made in the plaint are only relevant for the consideration of an application under Order VII Rule 11 of the Code of Civil Procedure. Having regard thereto, he would submit that it is not a case of thika tenancy, there is no statement made in the plaint as regards thika tenancy and as such the contention of the petitioner cannot succeed. In any event, since the matter pertains to eviction of a licensee, the provision of Section 21 of the said Act shall not apply.
4. Having heard the learned advocates appearing for the respective parties and having considered the

materials on record I find that the petitioner contends that the Court should treat the property in question as a thika tenanted property on the basis of the claim made by the petitioner. I, however, notice that the plaint case proceeded on the premise that the plaintiff is an occupier and a lessee in respect of the suit property by virtue of the registered deed of lease dated 6th August, 2009. Unfortunately, such deed has not been annexed to the revisional application. The parties have also not disclosed the same before the Trial Court. It is rather the plaintiff's case that at the request of the defendants, the plaintiff had permitted the defendants to occupy two rooms, one kitchen with common user of bath and privy comprised of brick built walls with R.T. shed roofing appertaining to Howrah Municipal Corporation Holding No. 342 , Bellilous Road, within P.S. & District Howrah morefully described in the schedule to the plaint (hereinafter referred to as the "said property") as a licensee without any license fee for a period of four years with effect from 25th April, 2015, a further extension of three years was later granted with effect from 25th April, 2019. After the expiry of the aforesaid period though the plaintiff requested the defendants to quit and vacate the suit property since the defendants had failed to adhere to such

request and had also been causing tremendous acts of waste and damage of the suit property, the plaintiff had revoked the license by a notice in writing dated 14th September, 2022 through her authorized agent/advocate, *inter alia*, calling upon the defendants to quit and vacate the suit property within 15 days from service of such notice.

5. Despite expiry of this notice period, the defendants having failed and neglected to vacate the suit property, the instant suit has been filed. As submitted by Mr. Mukherjee, the learned advocate representing the opposite party that there is no reference of thika tenancy or the suit land in question being a thika land or the defendants being thika tenant. It is elementary in an application under Order VII Rule 11 of the Code of Civil Procedure, the statements made in the plaint are required to be taken as true and correct. At this stage there is no scope for the Court to decide the application under Order VII Rule 11 of the Code of Civil Procedure on the basis of the assertion made by the defendants in the written statement. The learned Judge by the order impugned has rightly held that it is only the averments made in the plaint that is required to be looked into. Having regard thereto, I do not find any irregularity on the part of the learned Judge in rejecting the application filed

under Order VII Rule 11 of the Code of Civil Procedure, 1908.

6. The revisional application, being CO 1215 of 2024 is accordingly dismissed.
7. There shall be no order as to costs.
8. The learned Judge shall proceed with the hearing of the suit being uninfluenced by any of the observation made hereinabove.
9. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)