

C.O. 1787 of 2023

Mohan Kumar Shaw @ Mohan Shaw & ors.
Vs.
Hari Shankar Roy (Yadav) & anr.

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
Ms. Dipanwita Ganguly
Mr. Kaustav Bhattacharya
Ms. Sinjini Chakraborty
....for the petitioners.

Mr. Surajit Roy

....for the opposite parties.

This revisional application arises out of an order dated May 18, 2023, passed by learned Civil Judge (Junior Division) 7th court, Howrah, in Title Suit no.1310 of 2019.

By the order impugned, the learned court below allowed the application for amendment of the plaint.

The learned court below held that the plaintiffs had filed the suit for eviction under the provisions of West Bengal Premises Tenancy Act, 1997, and by an amendment application, another ground for eviction was sought to be introduced, namely, eviction under Section 2 (g) of the said Act.

The additional ground was sought to be introduced in view of the change in the circumstances, due to operation of law. Moreover, the

correctness of the proposed amendment was not required to be looked into at the stage of deciding whether an amendment should be allowed or not. Merits of the proposed amendment would be decided at the time of trial. Thus, due to the peculiar circumstances of the case and the legal proposition, the amendment should be allowed.

The plaintiffs/opposite parties filed a suit for eviction and mesne profits against the defendants/petitioners on the grounds of default and reasonable requirement. In paragraph 2 of the said plaint, it had been categorically stated that the father of the defendants, namely, Chobinath Shaw was inducted as a premises tenant in respect of a pucca room situated at the ground floor of the premises at holding no.79/2, Makardaha Road. As per the terms and conditions of the agreement, it had been specifically mentioned that after demise of Chobinath Shaw, his sons would be entitled to occupy the suit property. The tenancy was created at the rate of Rs.900/- per month, payable according to the English calendar month. Thereafter, the said amount was enhanced to Rs.990/- per month.

The defendants/petitioners informed the plaintiffs about the demise of Chobinath Shaw. After demise of Chobinath Shaw, his five sons, Mohan Kumar Shaw, Shanu Kumar Shaw, Anikesh Shaw,

Ram Gobind Shaw and Pintu Shaw became tenants under the plaintiffs.

The five sons enjoyed the premises as joint tenants under the plaintiffs. Upto the month of August, 2017, the rents had been paid to the plaintiffs by the defendants, but the defendants defaulted in payment of rents of the property under their occupation since September, 2017. The plaintiffs requested the defendants on various occasions to pay the arrear rents, but they refused. Thus, the defendants were liable to be evicted from the suit property on the ground of default.

The further plaint case was that the plaintiffs reasonably required the premises for their own use and occupation. The suit property was a two storied pucca building. The family of the plaintiff nos.1 and 2 required the premises for their own use and occupation. At least, thirty rooms were required as the family members were growing up. The rooms were required for their educational purpose and also for office use. Despite request to vacate the premises, the defendants refused to do so. A notice of eviction was sent to the defendants through the learned advocate for the plaintiffs on August 29, 2019 by a registered post with A.D. and the defendants were asked to vacate the tenanted premises by the end of September, 2019. After expiry of the said period, the

defendants became the trespassers in respect of the suit property on and from October 1, 2019. The suit was filed.

The plaintiffs prayed for the following reliefs :-

- i. Decree for eviction may be passed against the defendants in respect of the schedule mentioned suit property,
- ii. Mense profit equivalent to rent,
- iii. Cost of the suit,
- iv. Any other equitable relief or reliefs in which the plaintiffs are entitled to law and equity.

The schedule of the plaint is quoted below.

“One pucca shop room situated at the ground floor of the premises at holding no.79/2 Makardaha road, P.S. – Bantra, District – Howrah, which is butted and bounded as follows-

On the North – occupied room of Bablu Mondal
 On the South – tenanted premises of Ashim Dutta,
 On the East – house/room of the plaintiffs
 On the West – Howrah Amta Road”

The plaintiffs filed an application under Order 6 Rule 17 of the Code of Civil Procedure, for insertion of paragraph 3A, after paragraph 3 of the plaint.

Paragraph 3A is quoted below:-

“3A. That the plaintiffs state that Chobinath Shaw was inducted as the original tenant in respect of the suit property, who died in the year 2014; but his death was not timely disclosed by the defendants to the plaintiffs. Subsequently, the plaintiffs came to know about the demise of the original tenant viz. Chobinath Shaw but did not know the exact time. Thereafter, the plaintiffs sent an eviction letter to the defendants. Soon after receiving the said eviction notices defendants have filed a civil suit before this Id. Court being T.S.1120/2019 against the plaintiffs (for the instant suit) for declaration of their tenancy right and injunction in respect of the suit property and said case was finally disposed of by the Id. Court on 09.06.2022. In the said suit, from the pleadings adduced by the defendants (plaintiffs in

that suit) the plaintiffs firstly came to know that Chobinath Shaw died in the year 2014. It is stated that after demise of Chobinath Shaw no fresh tenancy was created in between the plaintiffs and the defendants in respect of the suit property. Moreover, 5 years have already been elapsed from the death of the original tenant. So, the defendants' right to occupy the suit premises came to an end by the operation of law. Ld. Court upon hearing was pleased to hold that the claim of premises tenancy of the defendants is not proved. Their right to occupy the suit premises came to an end by the operation of law. The plaintiffs crave leave to file the certified copy of the judgments passed in connection with T.S. No.1120/19 passed by the Ld. 7th Civil Judge (Jr. Divn.) at Howrah on 09.06.2022 at the time of hearing of the suit."

The defendants filed their written objection to the said application and inter alia, stated that the proposed amendment amounted to withdrawal of admission and if such amendment was allowed, the nature and character of the suit would be completely changed.

By way of an amendment, the plaintiffs wanted to introduce a separate ground and also the fact that the defendants have filed a Title Suit being no.1120 of 2019 against the plaintiffs for declaration of tenancy and injunction. The said suit was finally disposed of on June 09, 2022.

From the plaint in the said suit, the plaintiffs came to know that Chobinath Shaw died in 2014 and since five years had lapsed from the death of the original tenant, the defendants did not have any right to occupy the suit premises and the tenancy had

come to an end by operation of Section 2(g) of the said Act.

For convenience, the provisions of Section 2(g) is quoted below: -

(g) "tenant" means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and 2 [in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family, and were dependant on him or a person authorised by the tenant who is in possession of such premises] but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction: Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises,

Provided further that the son, daughter parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises 1 [on condition of payment of fair rent]. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.

According to the said provision, in the event of a death of the original tenant, the son, daughter, spouse, parent and the widow of predeceased son, who were ordinarily residing with the tenant up to the date of death of the tenant, as members of the family, who were dependent on him and also did not own and occupy any other property for residential purpose, could remain in the tenanted premises not exceeding a period of five years.

Thus, the plaintiffs wanted to incorporate such provision as an additional ground for eviction on the ground that upon death of the original tenant in 2014, the five sons/defendants could not have remained in the premises beyond five years from 2014, as their right to remain in the said premises came to an end after five years from the date of death of the original tenant, by operation of Section 2(g) of the said Act.

The plaint case is clear in paragraph 2, the plaintiffs had categorically stated that after demise of Chobinath Shaw, his five sons had become tenants under the plaintiffs. That the five sons of Chobinath Shaw, were joint tenants under the plaintiffs. Thus, there is a clear admission that the plaintiff had treated the defendants as joint tenants and had accepted rent up to September, 2017.

Whereas, the case made out in the amendment application is that the original tenant died in the year 2014 and the defendants had lost their right to remain in the tenanted premises, five years from the date of death of Chobinath Shaw.

By the amendment, the plaintiffs sought to withdraw their categorical admission in paragraph 2 of the plaint that the sons of Chobinath Shaw had become joint tenants under the plaintiff, who had paid rent upto the month of September, 2017. Moreover, the statements in paragraph 3A sought to be incorporated by way of an amendment and the statements in paragraph 2 are contradictory and conflicting.

The defendants had been recognized as joint tenants by the plaintiffs and they admittedly paid rent up to the month of September, 2017, was the original plaint case. The original tenant died in 2014. Whereas, in the amendment, the plaintiffs wanted to assert that by operation of Section 2(g) of the said act, the defendants/five sons of the original defendant, could not remain as premises tenants beyond five years. The suit for eviction under Section 6 of the said Act was sought to be converted to a suit for eviction of trespasser under Section 2(g) of the said Act, even after rents were accepted upto three years from death of the original tenant.

In case of amendment of the plaint, withdrawal of admission cannot be allowed.

Moreover, in case of an amendment of a plaint, contrary statements or inconsistent pleas cannot be allowed.

Under such circumstances, the principles laid down by the Hon'ble Apex Court, time and again, do not support such kind of amendment. In the decision of ***Life Insurance Corporation of India vs Sanjeev Builders Private Limited & Anr.*** decided in ***Civil Appeal No. 5909 of 2022***, the Hon'ble Apex Court laid down the principles governing amendment, in paragraph 70 of the decision. The relevant portion is quoted below:-

(iii) The prayer for amendment is to be allowed:-

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

Reliance is placed on ***Revajeetu Builders and Develpers vs. Narayanaswamy and Sons and ors.*** reported in ***(2009) 10 SCC 84***. Paragraph 26, of which is quoted below:-

“26. In the same judgment of Usha Balashaheb Swami [(2007) 5 SCC 602] , the Court dealt with a number of judgments of this Court and laid down that the prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute the cause of action or the nature of claim applies to amendments to the plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable”

Under such circumstances, the order impugned is set aside and the revisional application is allowed.

The suit shall proceed on the basis of the original plaint and be disposed of within a year from the next date fixed.

There will be no order as to costs.

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

(Shampa Sarkar, J.)