

March 13, 2024
Sl. No.15
Court No.19
s.biswas/srm

C.O. No.1945 of 2022

Subhanjan Pal and others
Versus
Maya Bhattacharya and others

Mr. Biswanath Chatterjee
Mr. Sobhan Pathak

... for the petitioner

Mr. Atanu Biswas
Mr. Mrinal Saha

... for the opposite party no.7

1. This revisional application arises out of an order dated June 4, 2022 passed by the learned Civil Judge (Senior Division), Kalna, Purba Bardhaman in Title Suit No.64 of 2021.
2. By the order impugned, the learned court allowed the application filed by the defendant No.7, opposite party No.7, herein. Despite service, none appears on behalf of the other opposite parties. It is also submitted that the other opposite parties are not contesting the suit. Thus, service of the revisional application upon the said opposite parties is dispensed with. Moreover, the order impugned relates to interest of the opposite party No.7 whose application was allowed by the order impugned. Hence, the revisional application is taken up for final disposal.
3. By the order impugned, the learned court allowed an application filed by the opposite party No.7,

permitting deposit of arrear rent before the learned court. The opposite party No.7 claimed to be a tenant under Minati Bhattacharya in respect of Ka-1 schedule property. He claimed to have paid rent till 2019. In the middle of 2019, Minati Bhattacharya fell ill and she breathed her last on March 17, 2020. The opposite party No.7 did not have any information about the transfer of share of Minati in favour of the plaintiff No.1. When he got summons of the suit, namely, Title Suit No.64 of 2021, he came to know of the transfer and filed the application for deposit of all arrear rent from June 1, 2019 to August 7, 2019. The plaintiffs filed written objection to the said application, inter alia, contending that the plaintiffs were co-sharers with other defendants. That the plaintiffs had purchased the property from Minati, Sunil and Mina Bhattacharya. All three were co-sharers of the property. Minati did not have any right to induct the tenant on her own. Taking advantage of Minati's absence, the defendant No.7 took forceful possession of the property in question, who was a rank trespasser. In a partition suit, such deposit of rent could not be permitted.

4. The learned court held that although the main reliefs were for partition of the property in metes

and bounds an incidental prayer for eviction of the defendant No.7 as a rank trespasser was also made. The defendant No.7 had a claim to tenancy and had filed a counterclaim in that regard. There were rent receipts which indicated that the defendant No.7 had been inducted by Minati Bhattacharya at some point of time. Thus, according to the learned court, before the status of the defendant No.7 could be decided, the defendant No.7 was entitled to deposit all arrear rent in the court as a tenant. It could not be said that the defendant No.7 was not a tenant in the suit property.

5. Learned Advocate for the petitioners/plaintiffs submits that the plaintiffs had purchased around 7.9 decimals of the property situated at Holding No.73 within Kalna Municipality from Suniti Kumar Bhattacharya, Minati Bhattacharya and Mina Bhattacharya by four registered deeds of conveyance between 2019 and 2020. The plaintiffs purchased an undivided property. The other defendants in the suit property were allegedly the co-sharers of the vendors of the plaintiffs, except opposite party No.7. As the property was undivided, the suit was filed for a preliminary decree, final decree and ejectment of

the defendant No.7, who was in unauthorized occupation of the property.

6. It is submitted that in a suit for eviction of a trespasser or ejectment of a trespasser, the question of allowing arrear rent to be deposited in the court would not arise. This was neither a suit under the Premises Tenancy Act nor a suit where relief against forfeiture for non-payment of rent could be granted to the defendant No.7. The suit was primarily for partition of the property which was jointly owned by the petitioners and the other defendants through one Hemnalini Debi.
7. Mr. Atanu Biswas, learned Advocate for the opposite party No.7 submits that the court directed deposit at the risk of the defendant No.7/tenant and as such no prejudice has been caused to the plaintiffs.
8. The defendant No.7 already has a counterclaim. His status will be decided in the suit. Whether he is liable to be evicted or not, will be proved in the suit. By allowing the deposit of arrear rent, the learned court has transformed the suit into one for eviction under the Premises Tenancy Act. Until the status was decided, the question of deposit of arrear rent would not arise. Moreover, there is nothing to show when Minati had fallen

ill and when the rent could not be tendered to her. Whether any attempt was made by the defendant No.7 to deposit the rent with the Rent Controller, is also an issue.

9. Be that as it may, a prayer for eviction of a trespasser in a suit for partition on the ground that one co-owner could not have inducted any person in the premises and that the defendant No.7 had taken advantage of the absence of Minati and trespassed into the property, has been made. The question of deposit of arrear rent in support of the counterclaim would not arise. It is not a case that the landlord prays for payment of agreed rent in the suit for eviction of trespasser. The defendant No.7 cannot claim protection by depositing the rent. It is for the defendant No.7 to prove his counterclaim on evidence and subsequent deposit of rent would not come to his benefit.
10. Under such circumstances, the order impugned is set aside.
11. The issues will be decided at the trial.
12. This order shall be restricted to adjudication of the present dispute.
13. With the aforesaid observations, the revisional application is disposed of.
14. There shall be no order as to costs.

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

(Shampa Sarkar, J.)