

Ct. No. 652
19.01.
2024
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R.V.W. 162 of 2023
with
CAN 1 of 2023
in
C.O. 3396 of 2018
Sk. Sabbir & Ors.
-Versus-
Nurjahan Begum & Ors.

Mr. Gopal Chandra Ghosh
Mr. Arnab Roy

...For the Petitioners

Mr. Sibnath Ganguly
Mr. Argha Banerjee

...For the O.P. nos. 1(a) to 1(e)

This review application has been preferred in connection with order dated June 23rd, 2023 passed by this court while disposing C.O. 3396 of 2018. By the impugned order the aforesaid application was allowed thereby the order impugned being order no. 25 dated 04.09.2018 passed by the Court below was set aside.

It has been contended by the petitioners that the petitioners are the Thika Tenants in respect of the suit property. The opposite parties/plaintiff no. 1 to 35 herein filed Title Suit no. 147 of 2015 seeking partition of the suit property along with other reliefs. The petitioners of the said application being C.O. 3396 of 2018 appeared in the said suit and filed an application under order XIV rule 1 and 2, challenging maintainability of the suit being barred under the provision of West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001. Plaintiff opposite parties filed written objection and after contested hearing

the Trial Court rejected defendants application under order XIV rule 1 and 2 with the observation that the present suit is a suit for partition and as such it is maintainable.

Being aggrieved by that order aforesaid Revisional Application being C.O. 3396 of 2018 had been preferred before this Court. This Court while disposing the said application held that *the main question which is required to be adjudicated in the present context is whether Hazi Sukhoo was the original Thika Tenant in respect of the suit property and after his death all his legal heirs namely parties in the suit have inherited the suit property or Hazi Kuddus, one of the grandson of Hazi Shukoo was the sole Thika Tenant in respect of the suit property and after his death only his legal heirs i.e. the petitioners of the said application/contesting defendants became sole Thika Tenant in respect of the suit property.*

Accordingly this court further held that the question of partitioning the suit property will come only when it would be adjudged that Hazi Shukoo was the original Thika Tenant and after his death all his legal heirs i.e. the parties in the said suit have become co-sharer in respect of the suit Thika Tenanted property. In such view of the matter this court concluded by the aforesaid order impugned that for the purpose of determination as to whether the heirs of Hazi Kuddus are sole tenant or all the legal heirs of Hazi Shukoo are the

Thika Tenant in respect of the suit property can only be adjudicated by the Thika Tenancy Tribunal and the suit before a civil court for determination of said question is barred under section 5 (3) of the Act of 2001.

Mr. Gopal Ghosh learned counsel appearing on behalf of the petitioner submits that since no affidavit in opposition was called for, therefore the applicants could not bring on the record one order dated July 20, 2016 passed in Misc. Case no. 28 of 2015 by the Deputy Controller, Kolkata Thika Tenancy, declaring all the legal heirs of Hazi Shukoo as the Thika Tenants in respect of the Suit property. He further submits thereafter on the basis of said order the name of the legal heirs of Hazi Sukhoo has been mutated as Thika Tenants in respect of the suit property by the Thika controller. Mr. Ghosh accordingly submits that as Deputy Thika controller already decided the issue, which could not be brought on record at the time of hearing, declaring the parties as Thika Tenants and which order has attained its finality, the observation of this court in order dated June 23, 2023 passed in C.O. No. 3396 of 2018 is an error which is apparent on the face of the record and since no question of determination of Thika Tenancy is involved in the aforesaid suit so, the order impugned is required to be reviewed for sufficient reason.

Mr. Sibnath Ganugully learned counsel appearing on behalf of the opposite parties herein, submitted that

this Court rightly passed the order impugned and there is no question of exercising jurisdiction under order XLVII rule 1 read with section 114 of the Code of Civil Procedure because the suit has already been dismissed by the court below in terms of aforesaid impugned order. Plaintiff No. 4 and 5 have admitted Hazi Kuddus as their landlord and accordingly they cannot claim themselves as Thika Tenants in respect of the suit property. Mr. Gangully further submits that the contesting defendants had already filed written objection against aforesaid erroneous recording before the Thika controller which is still pending for disposal. Furthermore in the plaint plaintiff never disclosed about any such document which he relied in the review application. Accordingly there is no error which is apparent on the face of the order. In fact plaintiffs for the first time disclosed about the order dated 23.07.2016 on 04.09.2018 and remained silent in connection with the application filed by the defendants before Thika controller. He further submits that the said order has been procured by the plaintiffs on the basis of fraudulent service of notice in collusion with the postal department. Accordingly he has prayed for dismissal of the review application.

I have considered submissions made by both the parties.

It is not in dispute in the present case that Hazi Shukoo is the original Thika Tenant in respect of the suit

property who died leaving behind widow, five sons and two daughters out of which Hazi Kuddus is one of the grandsons of Hazi Shukoo and son of Golam Rasul. After the death of Hazi Shukoo the name of Hazi Kuddus alone was recorded as Thika Tenant in respect of property in dispute. Challenging the said recording when the matter was brought before the Kolkata Thika Tenancy, the Deputy Controller by the aforesaid order dated 20.07.2016 was pleased to observe as follows:

“Considering all the documents it appears that Hazi Md. Sukur was the original Thika Tenant over the said premises. On scrutiny of the Return file, it appears that Md. Kuddus was recorded as a thika tenant by the controller. Kolkata Thika Tenancy and the same was informed to the Kolkata Municipal Corporation authority. The petitioners alleged that the name of Md. Kuddus brought in record as the sole legal heir of late Thika Tenant Md. Hazi Sukur on the basis of suppression of facts. All relevant documents are perused, viz, Affidavit sworn in before Ld. Magistrate. Faraznama etc. After scrutiny of all issues, it is clear that suppression of facts did indeed occur in the matter of heirship of late Md. Hazi Sukur. Hence, it is ordered that Md. Hazi Sukur is declared as post-facto thika tenant in respect of the subject premises for an area of 05 Cottah 10 Chitak 25 sq. ft. Sk.Shabbir, Sabana Parveen, Sabrin Parveen. Golam Hossain, Afroz Begum, Golam Akber, Firdous Brgum. Salma Bibi @ Malaika Bibi, Md. Parvez, Md. Quasim. Akhter Ali, Anwar Ali, Anjum Bibi, Sabnam Bibi, Razia Sultana, Zulekha Bibi. Javed Ali, Sahajahan Ali, Kamal Ali, Sahed ali, Sadaf Ali, Shamima Begum, Shammi Gohar, Rukshana Begum Nasreen Begum Farhat Kauser. Md. Kuddus Noorjahan Begum, Md. Muataque, Md. Wasim Pune, Mumtaz Begum, Anwar Ali, Kurban Ali, Mustari Begum, Iqbal Warsi, Guddu Warsi, Bhulu Warsi, Guria Begum Akhter, Israt Begum, Javed Ali, Nobed Ali, Nahid Begum declared as substituted thika tenants for the suit premises.”

By a subsequent order dated 10.01.2018 the name of all the aforesaid persons have been mutated in respect of the suit property by the controller, Kolkata Thika Tenancy which was conveyed to the plaintiffs vide Memo No. 83/01/XX/KTT/18 dated 17.01.2018.

Accordingly in terms of aforesaid order it is clear that the property in question was initially recorded in the

name of Hazi Kuddus alone as Thika Tenant due to suppression of fact as reflected in the order dated 20.07.2016.

In view of the specific provisions laid down in order XLVII rule 1, any person considering himself aggrieved can pray for review on the basis of discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made or on account of some mistake or error apparent on the face of the record or for any other sufficient reasons. It is also well settled that error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review. In the present context in view of aforesaid order dated 20.07.2016 read with mutation certificate dated 10.01.2018, it is self-evident that the observation of this court while disposing C.O. 3396 of 2018 to the extent that it is required to be ascertained as to whether all the legal heirs of Hazi Shukoo have inherited the tenancy right or only Hazi Kuddus had acquired tenancy right in respect of the suit property is an error which is apparent on the face of record and it is not required to be detected by any process of reasoning. Furthermore the words “*or for any other sufficient reason*” as appearing in order XLVII rule 1 must be read as sufficient requirement for

adjudication of the real controversy between the parties.

In such view of the matter since the aforesaid Title Suit no. 147 of 2015 pending before Civil Judge (Senior Division) Sealdah is a suit for partition and no question for determination of Thika tenant or Thika tenancy is involved in the said suit, the suit is very much maintainable before the Civil Court and I find that this is a fit case where exercise of power of review under order XLVII rule 1 is warranted on account of error apparent on the face of record as also on the ground of sufficient reason. Accordingly the order dated 23.06.2023 passed by this court in C.O. 3396 of 2018 is hereby recalled and thereby affirmed the impugned order passed by the court below being order no. 25 dated 04.09.2018 passed in the said suit.

C.O. 3396 of 2018 is accordingly dismissed.

I am informed that in view of the earlier dated 23.06.2023 passed by this Court, the suit has already been dismissed holding not maintainable. In view of aforesaid observation the Trial Court is directed to set aside its order of dismissal dated 12.07.2023 passed in T.S. 147 of 2015 and to restore the said suit in its original file with original number and to dispose of the same in accordance with law at the earliest, without being influenced by any observation made herein.

RVW 162 of 2023 is accordingly allowed.

Urgent Photostat certified copy of this judgment, if applied

for, be supplied to the parties upon compliance with all requisite formalities.

(Ajoy Kumar Mukherjee, j.)