

Item No.84
15.04.2024
Court. No. 19
GB

C.O. 2673 of 2023

Sunil Lachmandas Daswani & Ors.

Vs.

Smt. Rupasree Dass & Anr.

*Mr. Tanmoy Mukherjee,
Ms. Mrinalini Majumder,
Mr. Debabrata Ray*

...for the Petitioners.

*Mr. Uttiya Ray,
Mr. Anirban Ghosh*

...for the Opposite Parties.

1. This revisional application arises out of an order dated July 20, 2023, passed by the learned Judge, 3rd Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No.429 of 2012.
2. By the order impugned, the learned court rejected an application under Order 7, Rule 11 of the Code of Civil Procedure. The learned court was of the view that the suit was filed jointly by the beneficiaries of the last will and testament of the original landlord/owner of the property, Gopinath Roy. The petitioners were inducted as tenants in respect of the property in question by late Gopinath Roy. After demise of Gopinath Roy, the plaintiffs as beneficiaries had filed the suit for eviction.
3. The contention of the defendant that the suit was barred under law as the executor was not a party to the suit, was not accepted by the learned court on the ground that in a suit for eviction only the landlords and the tenants were necessary parties. No third parties were required to be

impleaded in such a suit. Accordingly, the court was of the view that a meaningful reading of the plaint did not indicate that the suit was barred either on the ground of maintainability or under any other law in force. The court held that the West Bengal Premises Tenancy Act, 1997 being a special Statute should be adjudicated with regard to the specific provisions in the said Act. The lis involved was only between the landlord and the tenant. Moreover, the question of misjoinder of parties was a mixed question of law and fact, which was to be decided on evidence. The learned court accordingly rejected the application as the court was of the view that the plaint read as a whole disclosed a cause of action, and the suit was maintainable.

4. Mr. Mukherjee, learned advocate appearing on behalf of the tenants/petitioners submits that the suit was not maintainable as the probate had been applied for, but not granted. The plaint case disclosed that the opposite parties as plaintiffs, filed the suit. They were beneficiaries under the Will and the facts disclosed before the court did not indicate who was the executor of the Will. Mr. Mukherjee further contended that the executor was the custodian of the estate of the deceased and the suit for eviction also, ought to have been filed by the executor.
5. Mr. Ray, learned advocate appearing on behalf of the opposite parties/plaintiffs submits that the Will had been executed in favour of Smt. Rupali Roy, wife of Gopinath Roy (since deceased). Rupali Roy died after the institution

of the suit and her heirs have been substituted. Thus, the question of grant of probate would not further arise as the wife of the testator had died.

6. Paragraphs 2 and 3 of the plaint are relevant for disposal of this revisional application. In paragraph 2, the opposite parties have stated that Gopinath Roy (since deceased) let out the property to the defendants. After demise of Gopinath Roy on December 20, 2010, the interest of Gopinath Roy devolved upon Smt. Rupali Roy for her lifetime in terms of the last Will and testament dated July 21, 2006. The plaintiff applied for probate and she was the sole executrix of the Will.
7. The defendants deny that the suit was filed by the sole executrix.
8. In my opinion, the question raised by Mr. Mukherjee is a triable issue. Moreover, whether the suit could continue at the behest of the heirs of the widow of the deceased/testator, is also a triable issue. The plaint as a whole indicates that Rupali Roy had filed the suit after applying for grant of probate of the last Will and testament of Gopinath Roy and she was the sole executrix in the said Will. The relevant paragraphs are quoted below:-

“2. The Suit premises was let out by the said Gopinath Roy, since deceased, to the defendant for the purpose of his residence.

3. The said Gopinath Roy, since deceased, departed his life on 20th December, 2010. Upon the death of Gopinath Roy, since deceased, the interest of the said Gopinath Roy, since deceased, in the said premises no.11, Chowringhee Lane, P.S. – New Market, Kolkata – 700016, including the suit premises developed upon the plaintiff for her life in terms of the last Will and

Testament dated 21st July, 2006 of Gopinath Roy, since deceased. The plaintiff has already applied probate for the said last Will and Testament of Gopinath Roy, since deceased, as the sole executrix name therein.”

9. Under such circumstances, the revisional application is disposed of without any interference with the order impugned. The plaint read as a whole does not indicate that the suit was barred by law. The questions raised by the defendants with regard to the correctness of the statements in paragraph 3 is a matter of trial, which has to be decided as an issue. Whether the present plaintiffs could maintain the suit will also be decided as an issue. There is no irregularity in the order impugned as the issues raised by the defendants are triable issues and to be decided in the evidence.
10. The revisional application is accordingly disposed of.
11. There shall be no order as to costs.
12. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)