

04.01.2024
Sl. No.10(DL)
srm

C.O. No. 2610 of 2022

Brijendra Kumar Singh alias Sradha Nand Singh

Versus

Smt. Irani Bhakat

Mr. Dhjiraj Trivedi,
Mr. Brijesh Giri,
Mr. Sunil Gupta

...for the Petitioner.

Mr. Buddhadeb Ghosal,
Mr. Chandrachur Chatterjee

...for the Opposite Party.

The revisional application has been filed by the defendant in a suit for eviction, being aggrieved by the order dated July 7, 2022 passed by the learned Judge, 4th Bench, Small Causes Court at Calcutta, in Ejectment Suit No.103 of 2013.

By the order impugned, the learned court refused to frame a preliminary issue on the point of maintainability of the suit with regard to the relationship between the parties and status of the defendant as a *thika* tenant in respect of the said suit property.

The application filed by the petitioner, was rejected by the learned court on the ground that the relevant documents relied upon by the defendant in support of his contention that the suit property was a *thika* property was a mixed question of

law and fact The plaintiff objected to the declaration relied upon by the petitioner of being a *thika* tenant, on the ground of the same being forged and fabricated. The plaintiff relied on a reply given by the authority under the Right to Information Act, namely, the SPIO and Officer-in-Charge, Cossipore Regional Thika Tenancy Office, *inter alia*, stating that the issue was pending determination before the appropriate authority. That the matter was subjudice.

The court found that there was a report declaring the defendant to be the *thika* tenant and there was a counter-report indicating that the determination was still pending. The court also found that controversy was raised by the plaintiff with regard to the validity of the declaration relied upon by the defendant. Such disputes, according to the learned court, involved mixed questions of law and fact, which had to be proved in evidence. Under such circumstances, the court refused to frame a preliminary issue.

Mr. Trivedi, learned Advocate appearing on behalf of the defendant/petitioner submits that the plaintiff could not blow hot and cold. On the one hand the plaintiff had obtained a reply under the RTI Act, in which it had been stated that sometime in 1982 the suit property was declared as a *thika* property. On the basis of RTI application, the plaintiff approached the Thika Controller under Section 5(3) of the

West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (hereinafter referred to as the said Act). The plaintiff also approached the West Bengal Land Reforms and Tenancy Tribunal for a direction upon the Thika Controller for early disposal of the application filed under Section 5(3) of the said Act. Once the plaintiff has taken steps under the said Act, it would necessarily mean that the plaintiff had given up his claim that the defendant was a tenant in terms of the West Bengal Premises Tenancy Act, 1997. The suit should be dismissed as not maintainable, by framing a preliminary issue.

Mr. Trivedi, has drawn the attention of the Court to several pleadings and paragraphs in the objection filed by the plaintiff and also in the application filed before the West Bengal Land Reforms and Tenancy Tribunal. According to Mr. Trivedi, once it was admitted that the property was a *thika* property and the plaintiff had taken steps before the Thika Controller, question of pursuing the suit for eviction would not arise and the court was not required to go into any further evidence, but could have decided the preliminary issue on the pleadings.

Mr. Ghosal, learned Advocate appearing on behalf of the plaintiff/opposite party submits that the deed of 1955, by which the defendant was inducted as a tenant, would clearly indicate that the property was not a *thika* property. That there

were *pacca* structures on the property. Secondly, the defendant had admitted in the written statement, about his induction as a tenant in the property in question and about him paying rent to the plaintiff as the landlord. Subsequently, sometime in 2018, after five years from filing of the suit for eviction, an application was filed for amendment of the written statement and a self-destructive plea was incorporated, with regard to the defendant being a *thika* tenant.

Mr. Ghosal also submits that there were adjudications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997. Such orders were matters of record. Steps were taken by the tenant, as a premises tenant under the 1997 Act and the tenant could not withdraw from such conduct. Thus, according to Mr. Ghosal, there were triable issues, which could not be decided only on the point of law. As such, a preliminary issue in this regard could not be framed.

Having considered the rival contentions of the parties and having perused the deed of lease, the written statement, the RTI replies and also the declaration made available to the defendant, declaring him to be a *thika* tenant, this court is of the view that the issue has to be decided on evidence. There are claims and counter-claims. Evidence has to be led to prove the documents. Each of the parties had relied upon different documents. There is also a document of mutation in favour of

the plaintiff in respect of the property in question, without any mention as to whether the property was a *thika* property or not.

Under such circumstances, when an issue has been framed as to the maintainability of the suit, the same shall be decided.

Mr. Trivedi prays for stay of the suit, as the determination of Thika Tenancy is pending. This Court is of the view that the defendant should take steps in the court below, in this regard. The said prayer is beyond the scope of the revisional application.

As there is no quarrel with the proposition of law that Section 21 of the said Act bars civil suits with regard to *thika* property, the decisions relied upon by Mr. Trivedi are not dealt with at this stage.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)