

19.03.2024
Sl. No.49(DL)
srm

C.O. No. 4376 of 2023

Sudhir Chandra Basak

Versus

Gautam Basak & Anr.

Mr. Partha Pratim Roy,
Ms. Sudeshna Basu Thakur,
Ms. Banani Bhattacharya

...for the Petitioner.

The revisional application has been filed challenging an order dated August 5, 2023 passed by the learned Judge, 2nd Bench, City Civil Court at Calcutta, in Title Suit No.1423 of 2022.

The petitioner/defendant/tenant filed an application under Order XIV Rule 2 of the Code of Civil Procedure asking the court to frame a preliminary issue with regard to maintainability of the suit.

The contention of the defendant was that the plaintiff purchased the property from the erstwhile landlord, but in the said deed of purchase, the factum of tenancy was not mentioned. As the deed of purchase did not mention the factum of tenancy, the present owner of the property could not file a suit for eviction of a trespasser by pressing into service Section 2(g) of the West Bengal Premises Tenancy Act (hereinafter referred to as the said Act).

The learned court rejected such plea of non-maintainability of the suit on the ground that the mode and manner of acquiring title to the suit property would not be relevant in the context and the provisions of Section 2(g) of the said Act would be available, even if the tenancy was created under the 1956 Act. Although the defendant made an averment that the instrument by which the plaintiffs had become the owners did not mention anything about the existence of tenant, such documents were not produced before the court. The learned court was of the view that mere non-mentioning of the factum of tenancy would not *ipso facto* negate the rights of the present owner to claim eviction of the defendant and the issues raised would be decided on evidence in the trial. In any event, the suit was at the stage of cross-examination of the PW1.

Under such circumstances, the issues raised shall be decided at the trial and the learned court shall dispose of the same in accordance with law.

This Court does not find any need to interfere with the order impugned.

Accordingly, the revisional application is dismissed.

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.)