

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

F.A.T. 23 of 2023
with
CAN 1 of 2023
with
CAN 2 of 2023

Ajit Kumar Agarwala
-Vs-
M/s. Sevoke Properties Pvt. Ltd. & Anr.

For the Appellants : Mr. Bikramaditya Ghosh, Adv.
Ms. Supriya Singh, Adv,
Mr. Sitesh Kr. Gupta, Adv.

For the respondent
No.1 : Mr. U. s. Menon, Adv.
Ms. Sriya Basu, Adv.

For the WBSEDCL : Mr. Debanjan Mukherjee, Adv.

Heard on : 21.05.2024

Judgment on : 21.05.2024

Joymalya Bagchi, J. :-

1. Applicant has sought leave to prefer appeal against judgment and order dated 7th October, 2023 passed in Title Suit No.65 of 2005 awarding *mesne profits* to the tune of Rs.22,79,57,466/- in favour of the plaintiff. Title Suit No.65 of 2005 was instituted by plaintiff praying for a decree of

eviction and *mesne profits* against the defendant, West Bengal State Electricity Distribution Company Limited. In the suit a decree of eviction was passed against the defendant which came to have been affirmed upto the Apex Court. It is pertinent to note claiming himself as owner of the suit property applicant had prayed to be added as a party in the said suit. His prayer was dismissed with liberty to prefer a separate suit. In fact, he has instituted a separate declaratory suit being Title Suit No. 167 of 2023. Thereafter, by judgment and order dated 7th October, 2023 a decree for *mesne profits* has been passed against the defendant. We are informed the decree has not been challenged till date by the defendant but the applicant has approached this Court seeking leave to prefer appeal against the decree.

2. Mr. Ghosh, for the applicant submits his client is the owner of the suit land and has an interest in the *mesne profits* awarded for wrongful occupation thereof.

3. In rebuttal, Mr. Menon, for the plaintiff contends applicant is not a necessary party in the eviction suit. He has instituted a separate suit and no injunction has been granted in his favour.

4. It is trite a third party claiming title is not a necessary party in an eviction suit. It may be apposite to note the Hon'ble Apex Court in ***Kanaklata Das & Ors. Vs. Naba Kumar Das & Ors***¹; inter alia, held in an eviction suit question of title or the extent of shares held by co-sharers against each other in the suit premises cannot be decided and nor can be made the subject matter for its determination.

¹ (2018) 2 SCC 352 (Para 14 & 15)

5. It is also relevant to note prayer of the applicant to be added as a party in the suit had been earlier dismissed and no appeal was carried from that order. On the contrary, applicant has instituted a separate suit – merits whereof shall be adjudicated in the suit property.

6. In light of the aforesaid facts and law declared in ***Kanaklata Das & Ors.*** (Supra), I am of the considered view the applicant has no right to prefer appeal against the decree for *mesne profits* awarded in favour of the plaintiff in an eviction suit.

7. Accordingly, application for leave to appeal is dismissed. Consequentially, connected applications are also dismissed.

8. There shall be no order as to costs.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

as