

D/L- 36
25/02/2025
Ct. No.-6
Aritra

C.O. 113 of 2025

**Samiran De & Ors.
Versus
Jayasree Kar**

Mr. Arijit Bardhan
Ms. Afreen Begum
...for the petitioners

Mr. Jahar Chakraborty
Mr. Saniur Som
Ms. Baisali Ghoshal
....for the OP

This application is at the instance of the defendants in a suit for eviction under the West Bengal Premises Tenancy Act, 1997 and is directed against an order dated December 2, 2024 passed by the learned Judge, 4th Bench, Presidency Small Cause Court, Calcutta in Ejectment Suit No.424 of 2013.

By the order impugned the application filed by the opposite party herein under Section 151 of the Code of Civil Procedure praying for an order permitting her husband to depose on behalf of the plaintiff stood allowed.

Initially one Sephali Kar filed the suit for eviction against the petitioners. During the pendency of the said suit the original plaintiff died. The original plaintiff filed the suit in the capacity of a life interest holder in terms of a Will executed by the original owner of the property namely, Kshetra Mohan Kar. It is not in dispute that the

said Will was duly probated. However, during the pendency of the said suit, the original plaintiff, that is the life estate holder under the said Will, died. One Smt. Jayasree Kar, who was impleaded as the proforma defendant is the legatee under the said Will. Upon the death of Sephali Kar, the proforma defendant filed an application under Order 1 Rule 10(2) of the Code of Civil Procedure for being transposed to the category of plaintiff. Such application was allowed by the learned Trial Judge by an order being No.109 dated November 16, 2022. After being transposed to the category of the plaintiff, Smt. Jayasree Kar filed an application under Section 151 of the Code of Civil Procedure praying for an order permitting her husband to depose on her behalf. Such application was contested by the petitioner herein by filing a written objection thereto. Upon a contested hearing the learned Trial Judge, by the order impugned, allowed such application. Being aggrieved, the defendants have approached this Court.

Mr. Bardhan learned advocate appearing for the petitioners submits that the husband of the petitioner could not have filed the examination-in-chief by way of an affidavit on behalf of the transposed plaintiff. He submits that the order being No.109 dated November 16, 2022 did not permit the transposed plaintiff to give further evidence through her husband.

He further submits that the learned Trial Judge did not consider such aspect of the matter while allowing the application under Section 151 of the Code.

Per contra Mr. Chakraborty, the learned counsel representing the transposed plaintiff/opposite party herein submits that the suit is at the stage of argument. The order being No.109 dated November 16, 2022 observed that ownership has to be established by adducing evidence.

Heard the learned advocates for the parties and perused the materials placed.

It is not in dispute that the instant suit is for eviction under the provisions of the West Bengal Premises Tenancy Act, 1997, *inter alia*, on the ground of reasonable requirement. It appears from the order dated November 16, 2022 that the learned Trial Judge observed that the ownership has to be established by adducing evidence by the transposed plaintiff/opposite party herein.

It is also not in dispute that the husband of the plaintiff deposed as PW-1 when the original plaintiff was alive. In the affidavit-in-chief filed by the husband of the opposite party herein it has been stated that he is fully conversant with the entire facts and circumstances of the case and is competent to affirm the affidavit and entitled to depose. It was further stated in the affidavit-in-chief that he was authorized to adduce evidence by the transposed plaintiff.

It is well-settled that it is the prerogative of a party to the suit to prove his/her case by adducing evidence through the witness that may be selected by such party. Section 120 of the Indian Evidence Act, 1872 states that in all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be confiscated witnesses. Therefore the husband of the plaintiff is a competent witness to depose on behalf of the plaintiff of the instant suit.

To the mind of this Court, the learned Trial Judge rightly held that neither the Court nor the defendants can compel the plaintiff to bring any particular person to adduce evidence to prove the case of the plaintiff. The order impugned is a well-reasoned order.

In view thereof this Court is not inclined to interfere with the order impugned. Taking note of the fact that the suit for eviction is of the year 2013 and one of the grounds for eviction is reasonable requirement, learned Judge, 4th Bench, Presidency Small Cause Court, Calcutta is requested to dispose of the suit as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

With the above observation CO 113 of 2025 stands disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)