

AD -33
Ct No.10
24.06.2025
(SSS)

SAT 11 of 2024
With
CAN 1 of 2025

Sri Narayan Paul and Ors.
Vs.
Sri Krishnendu Sarkar (Gopal) and Anr.

Mr. Tanmoy Mukherjee,
Mr. Kaushik Roy,
Mr. Souvik Das,
Mr. Rudranil Das
.....For the Appellants.

Mr. Siva Prasad Ghose
....For the Respondents.

1. Leave is granted to the learned Advocate-on-record for the appellants to carry out the necessary rectification in the preamble of the memorandum of appeal by introducing the name of the learned Trial Judge as well as by scoring through the superfluous date of the decree in terms of the defects as pointed out by the Additional Stamp Reporter.
2. Insofar as the correction of decree of both the courts below is concerned, the said decrees shall be sent down by the Department for necessary corrections at the earliest.
3. The appeal is now taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.
4. Certain very interesting questions have been raised in the present second appeal.

5. The brief facts of the case are that the plaintiffs/respondents filed a suit for recovery of possession against the defendants/appellants under Section 6 of the West Bengal Premises Tenancy Act, 1997 on several grounds as enumerated in the said statute.

6. In the original plaint, it was stated that until determination of the tenancy of the defendants by a quit notice under Section 6(4) of the 1997 Act, they were monthly tenants. Subsequently, by way of amendment of the plaint, the plaintiffs/respondents introduced the fact that the predecessor-in-interest of the defendants, one Kalipada Paul, who was the original tenant in respect of the property, expired on April 10, 2011.

7. It has also been pleaded in the amended plaint that under Section 2(g) of the 1997 Act, the defendants/appellants lost their status as tenants and were rendered trespassers after five years from the date of demise of the original tenant, through whom the defendants claimed their tenancy rights.

8. Both the courts below granted a decree of eviction on the ground that the defendants/appellants had become rank trespassers by operation of Section 2(g) of the 1997 Act.

9. Learned Counsel for the appellants argues that as per the frame of the original suit as reflected from the initial plaint, the defendants/appellants were

monthly tenants under the 1997 Act in their independent right of tenancy and not as the heirs of the original tenant. It is argued that by virtue of the amendment, a diametrically contradictory plea of the defendants being tenants through their predecessor-in-interest, the original tenant, was introduced. Since the two pleadings militate against each other, it is argued that the original pleading has to be taken as an admission that the defendants were monthly tenants in their own right.

10. It is submitted that as per the frame of the suit in terms of the original plaint, in the absence of any reference to the tenancy being inherited, it has to be construed that the plaintiffs admitted a fresh tenancy being granted to the defendants after the demise of their predecessor.

11. It is argued further that Section 2(g) of the 1997 Act does not preclude a landlord from granting a fresh tenancy to the heirs of the original tenant.

12. It is next contended that relief was granted under Section 7(2), read with Section 7(4), of the 1997 Act to the defendants by construing them as tenants in respect of the property.

13. That apart, the eviction notice under Section 6(4) of the 1997 Act, which was the cause of action and the genesis of the suit itself, itself admitted that the defendants/appellants were monthly tenants. As

such, the plaintiffs/respondents could not resile from that position by the subsequent amendment.

14. Thus, it is submitted that both the courts below substantially erred in law in proceeding on the premise that the defendants/appellants were trespassers under Section 2(g) of the 1997 Act.

15. Learned Counsel for the appellants cites a judgment of a learned Single Judge of this Court in CO No. 3022 of 2019 where it was held inter alia that the entire pleadings as discussed thereinabove, of both sides, proceeded on the premise that the defendants were original tenants as opposed to tenants in common by inheritance. The plaint never averred, in its original form, that there was any devolution of tenancy on the defendants as tenants in common, upon demise of the predecessor-in-interest of the defendants, i.e. the original tenant. Moreover, the only instance when the defendants were described as trespassers in the plaint, was on the premise that they did not comply with the quit notice under Section 6(4) of the 1997 Act. No mention of Section 2(g) was made in the plaint at all in the said case, despite such plea being available even at the inception of the suit. The suit itself was instituted in the said case in the year 2013 and the Act commenced long before such institution. It was taken note of that the period of five years after commencement of the 1997 Act, let alone from the

demise of the erstwhile original tenant, had elapsed much prior to the institution of the suit. On such premise, the court went on to hold that the plea of Section 2(g) was not available to the landlords.

16. Upon a careful consideration of the arguments of the appellants, we, however, are of the opinion that no substantial question of law is involved in the present second appeal for the following reasons:

17. Insofar as the frame of the original suit is concerned, it is pointed out on query of court by learned Counsel appearing for the respondents/caveators that the order dated March 18, 2021 passed in the suit, whereby the application for amendment of the plaint was allowed, was affirmed in revision by dint of an order dated November 22, 2021 passed in CO No. 1514 of 2021, preferred at the instance of the defendants/appellants.

18. Thus, the principle laid down in Section 105(1) of the Code of Civil Procedure cannot be borrowed in the present case, since the legality of the order allowing the amendment of the plaint has already been tested and affirmed by a learned Single Judge of this Court. Opening up the window of Section 105(1) of the Code, in a case where a revisional application was already preferred but turned down against the interlocutory order granting amendment of the plaint,

would be completely unjust and against the letter and spirit of law.

19. Thus, we have to proceed on the premise that the amended plaint was the plaintiffs' pleadings as on the date of the passing of the impugned decree of the courts below.

20. It is well-settled that the pleadings in a plaint have to be read as a whole and not in isolation. Even if in the first part of the plaint, in particular, in Paragraph no. 2 thereof, even after amendment, the pleading remained that the defendants/appellants were monthly tenants in respect of the suit property till the quit notice under Section 6(4) was issued, the same was watered down by the subsequent pleading in the amended Paragraph no. 3(iii) to the effect that the defendants, in a suit previously filed by them, had admitted that the predecessor-in-interest of the present defendants/appellants, one Kalipada Paul (the original tenant), expired on April 10, 2011 and thereafter, the tenancy rights of the said deceased Kalipada Paul devolved upon the present defendants/appellants. Thus, from the pleadings of the amended plaint, it can very well be gathered that the predecessor-in-interest of the defendants/appellants, one Kalipada Paul, was the original tenant and on his demise, the tenancy devolved on the present defendants.

21. This, read in conjunction with the statement that the defendants were monthly tenants, when construed together, clearly indicates that the so-called admission as regards monthly tenancy of the defendants was an admission against the law, since by operation of Section 2(g) of the 1997 Act, in the backdrop of the fact that on the demise of the original tenant, Kalipada Paul in 2011, his tenancy rights devolved on the present defendants as his heirs, the defendants/appellants had been rendered rank trespassers.

22. More importantly, it is nobody's case, in either the amended plaint or the written statement or additional written statement, that a fresh tenancy was created in favour of the defendants/appellants after the demise of their predecessor-in-interest, the original tenant, namely Kalipada Paul. Thus, the argument in that regard cannot be accepted at all. Read as a whole, the pleadings of the amended plaint go on to show that the ingredients of Section 2(g) of the 1997 Act were fully available, as the defendants/appellants claimed to be tenants by virtue of their heirship of the original tenant on the latter's demise.

23. Hence, it cannot be said that the ingredients of Section 2(g) were alien to the pleadings in the suit.

24. Insofar as the question raised regarding the frame of the suit being under a special statute i.e. the

1997 Act, we find from a perusal of the plaint that the principal relief sought therein was ultimately recovery of possession of the suit property from the defendants/appellants.

25. It has to be kept in mind that Section 6 of the 1997 Act, which is couched in a negative language, provides that no order or decree for the recovery of possession of any premises shall be made in favour of the landlord against the tenant unless the grounds set out therein were satisfied. It is noteworthy that the expression “Civil Judge” has been mentioned therein. The said expression clearly denotes that the forum before which a suit for eviction under Section 6 of the 1997 Act is to be filed is not a *persona designata* but acts as a civil court as in “Civil Judge”.

26. Therefore, at the end of the day, the suit filed in the present case was an eviction suit filed before a learned Civil Judge, who otherwise had jurisdiction to take up a suit for eviction of a trespasser as well.

27. In the present case, the notice under Section 6(4) was evidently superfluous. The statement made therein and in the original plaint regarding the defendants being monthly tenants was clearly an admission against the statute and as such, cannot be lent much credence.

28. The next argument of the appellants, that an adjudication was made under Section 7(2) granting relief under the said sub-section and sub-section (4)

of Section 7 to the appellants, is not acceptable, since such an adjudication does not automatically determine conclusively the rights of the defendants/appellants as tenants.

29. As is well-settled, interlocutory orders cannot bind the court while passing a final decree upon taking evidence. It cannot be gainsaid that the order passed under Section 7(2) was an interlocutory order and did not conclusively determine the rights and jural relationship *inter se* between the parties. Thus, even if a relief was given under the said provision to the defendants, the said relief was still-born, in view of the suit itself having changed character from one under Section 6 of the 1997 Act to a general suit for eviction of a trespasser upon the plaint being amended.

30. As such, since a relief under Section 7 of the 1997 Act can only be given to a defendant in a suit under Section 6 of the said Act, upon the suit partaking the character of a suit for eviction of trespasser on amendment of the plaint and introduction of the pleading on Section 2 (g) of the 1997 Act, such relief could not any longer enure to the benefit of the defendants in any manner whatsoever.

31. That apart, as discussed earlier, the order allowing the amendment of the plaint was already

affirmed by a revisional court and as such cannot be re-opened at this juncture.

32. Thus, we find that the conclusion arrived at concurrently by both the courts below, holding the defendants/appellants to be trespassers under Section 2(g) of the 1997 Act, does not merit interference in second appeal.

33. As stated above, in view of the above discussions, no substantial question of law is found to be involved in the matter.

34. Accordingly, SAT 11 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

35. CAN 1 of 2025 is also dismissed accordingly.

36. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)