

D/L. 6.
February 7, 2025.
MNS.

C. O. No. 461 of 2024

Pradipto Banerjee alias Partha Banerjee
and others

Vs

Prodyat Kumar Dhar and others

Mr. Souvick Mitra,
Mr. N. Roy

... for the petitioners.

Mr. Supratick Syamal,
Mr. Dhruv Surana,
Mr. Jai Kumar Surana,
Mr. Abhimonyu Roy

...for the opposite parties.

1. Supplementary affidavit filed today be kept on record.
2. Heard learned counsel for the parties.
3. The present revisional application has been preferred against an order whereby the petitioners' application for recall of a previous order holding the petitioners' application under Order XXI Rule 101 of the Code of Civil Procedure (in short "the Code") to be not maintainable, has been turned down.
4. Learned counsel for the petitioners submits that the petitioners claim to be joint tenants in respect of the decretal property. The petitioners applied under Order I Rule 10 of the Code for being impleaded as

defendants in the eviction suit filed against the other joint tenant, that is, the uncle of the petitioners.

5. The said application was initially allowed by the learned Trial Court. An application under Article 227 of the Constitution of India, however, was preferred against the same by the plaintiffs/opposite parties which met with success.

6. Subsequently, the suit was decreed against the uncle of the petitioners and the petitioners took a plea of joint tenancy in their application under Order XXI Rule 101 of the Code before the Executing Court.

7. Learned counsel argues that although the petitioners' prayer for impleadment was turned down by the revisional Court on the earlier occasion on the premise of Section 2(h) of the West Bengal Premises Tenancy Act, 1997 (for short, "the 1997 Act"), there was a specific finding in the order of the revisional Court dated June 6, 2016 that the observations made in the said order were only for the purpose of determination of the issues raised in the application for addition of parties and the order would not influence the trial of the declaratory suit filed by the opposite parties.

8. As such, it is submitted that the order, holding the Order XXI Rule 101 application to be not

maintainable, failed to consider such aspect of the matter.

9. Learned counsel for the decree holders/opposite parties opposes the revision and points out that the Order XXI Rule 101 application was filed on the self-same ground as the one under Order I Rule 10 and as such, was rightly held to be not maintainable.

10. Upon a careful perusal of the order dated June 6, 2016 passed by the revisional Court in C.O. No. 922 of 2016, I find that the observations made therein were categorically held to be for the purpose of determination of the issues raised in the application for addition of parties, although the same would not influence the trial of the declaratory suit. What the present petitioners have sought to achieve now is to indirectly achieve what they could not by way of the Order I Rule 10 application. Even going by the observations of the revisional Court, those applied the provision of Section 2(h) of the 1997 Act to the petitioner and were held to be for the purpose of determination of the issues raised in the application for addition of parties, which are exactly identical with the issues raised afresh under Order XXI Rule 101 of the Code of Civil Procedure.

11. Hence, although the revisional Court's observations might not have been binding at further

stages of the suit itself, such observations clearly operate on the principle of *res judicata* insofar as the self-same defence taken by the petitioners in the petitioners' application under Order XXI Rule 101 of the CPC is concerned.

12. Thus, I do not find any illegality or jurisdictional error in the learned Executing Court refusing to recall the order holding the application of the petitioner under Order XXI Rule 101 to be not maintainable.

13. Accordingly, the revisional application fails. C.O. No. 461 of 2024 is dismissed on contest without any order as to costs.

(Sabyasachi Bhattacharyya, J.)