

February 25, 2025
Sl. No.32
Court No.6
s.biswas

CO 641 of 2025

Sushanta Sutar
vs.
Pritha Nandy and another

Mr. Anuj Singh
Mr. Biswajit Ghosh
Mr. Sourajit Dasgupta

... for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant no.1 in a suit for eviction and is directed against an order being No.19 dated 30th November, 2024 passed by the learned Judge, 3rd Bench, Presidency Small Causes Court, Calcutta in Ejectment Suit No.189 of 2022.

By the order impugned, the application filed under Order 14 Rule 2(b) of the Code of Civil Procedure praying for framing of preliminary issue stood rejected.

The learned advocate appearing for the petitioner placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Sk. Sattar Sk. Mohd. Choudhari vs. Gundappa Amabadas Bukate* reported in (1996) 6 SCC 373 in support of his contention that a co-sharer cannot initiate action for eviction of the tenant from the portion of the tenanted accommodation. He submits that since the plaintiff/opposite party no.1 herein is admittedly a

co-sharer in the suit property, the instant suit is not maintainable.

Order 14 Rule 2(1) of the Code of Civil Procedure starts with non-obstante clause. It states that notwithstanding that a case may be disposed of on a preliminary issue, the court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues. Sub-rule (2) states that where issues both of law and of fact arise in the same suit and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to the jurisdiction of the court or a bar to the suit created by any law for the time being in force and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined and may deal with the suit in accordance with the decision on that issue.

After going through the provision laid down in Order 14 Rule 2 of the Code of Civil Procedure, it appears to this court that the court may try the issue relating to jurisdiction of the court or a bar to the suit created by any law for the time being in force and postpone the settlement of the other issues until after that issue has been determined.

The Honb'ble Supreme Court in *S. K. Sattar* (supra) has observed that whether the premises

which is in occupation of a tenant, shall be retained jointly by all the lessors or they would partition it among themselves, is the exclusive right of the lessors to which no objection can be taken by the tenant, particularly where the tenant knew from the very beginning that the property was jointly owned by several persons and that, even if he was being dealt with by only one of them on behalf of the whole body of the lessors, he cannot object to the transfer of any portion of the property in favour of a third person by one of the owners or to the partition of the property.

Thus, it is well-settled that the tenant cannot object if the joint owners transfer the suit property.

On a query of the court, learned advocate for the petitioner in his usual fairness submits that partition suit between the co-owners is still pending. In view thereof, this court is of the considered view that the issue of maintainability as sought by the petitioner by filing an application under Order 14 Rule 2(b) of the Code of Civil Procedure, has to be decided along with other issues.

The learned trial judge applied correct legal tests while rejecting the application filed by the petitioner in Order 14 Rule 2 of the Code of Civil Procedure. For such reason, this court is not inclined to interfere with the order impugned.

CO 641 of 2025 stands dismissed. There shall be however no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)