

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 2526 of 2025

**Ganga Prasad Jhawar
Vs.
Prabhat Jhawar & Anr.**

For the Petitioner : Mr. Mainak Bose, Sr. Adv.
Mr. Gautam Das, Adv.
Mr. Aniket Nanda, Adv.
Mr. Lokesh Sharma, Adv.
Mr. D. Sharma, Adv.

For the Opposite Parties : Mr. Varun Kothari, Adv.

Reserved on : 16.07.2025

Judgment on : 19.09.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of an applicant under Order 1 Rule 10(2) of the Code of Civil Procedure and is directed against an order being no. 25 dated June 23, 2025 passed by the learned Chief Judge, City Civil Court at Calcutta in Ejectment Suit no. 6 of 2022.

2. By the order impugned, the application under Order 1 Rule 10(2) of the Code of Civil Procedure stood rejected.

3. The opposite party no. 1 filed a suit for eviction and for recovery of Khas possession against the opposite party no. 2 herein. In the said suit the petitioner filed an application under Order 1 Rule 10(2) read with Section 151 of the Code of Civil Procedure praying for being added as a party defendant in the said suit. The said application was contested by the opposite party no. 1 by filing a written objection.

4. The learned Trial Judge rejected the application for addition of party by the order impugned. Being aggrieved, the applicant has approached this Court under Article 227 of the Constitution of India.

5. Mr. Bose, the learned Senior advocate appearing for the petitioner submitted that the petitioner is the owner of half share of the premises no. P-18, Kalakar Street in which the tenanted premises is situated and he has been collecting 50% rent from the tenant/opposite party no. 2 herein. He submitted that there exists a landlord-tenant relationship between the petitioner and the defendant/opposite party no. 2 herein and the defendant no. 2 herein is a monthly tenant under the petitioner. He, therefore, submitted that the petitioner is a necessary party in the instant suit and the question of evicting the opposite party no. 2 does not arise. Mr. Bose further contended that if a co-owner is not agreeable to evict the tenant, eviction suit filed by the other co-owner to evict the tenant is not maintainable. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***India Umbrella Mfg. Co. v.***

Bhagabandei Agarwalla, reported at **(2004) 3 SCC 178**. For the same proposition Mr. Bose also placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Mangal Builders & Enterprises Ltd. v. Williamson Magor & Co. Ltd.**, reported at **(2017) SCC Online SC 2133**. Mr. Bose further contended that a person who has a right in the property which is the subject matter of a suit, is a necessary party in such suit. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **M/S J.N. Real Estate vs. Shailendra Pradhan & Ors.** reported at **(2025) INSC 611**.

6. Per contra Mr. Kothari learned advocate for the opposite party no. 1 submitted that after filing of the suit for eviction the opposite party no. 2 herein filed a suit for declaration of tenancy right and for a further declaration that the opposite party no. 1 is not the owner of the suit property and he has no right to claim and/or receive any rent from the opposite party no. 2. He further contended that the application for addition of party was filed in the year 2024. He further contended that only the landlord and the tenant are necessary parties in a suit for eviction and in support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Kanaklata Das v. Naba Kumar Das**, reported at **(2018) 2 SCC 352**.

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

8. The opposite party no. 1 claims to have purchased Lot A and Lot B properties of the partition deed dated 03.04.1959 and the proportionate share in the common space in Lot D lying and situated at premises no. P-18, Kalakar Street by a registered deed of conveyance dated 25.01.2021. The opposite party no. 1 claims that the opposite party no. 2 was an existing monthly tenant in respect of one room on Lot A in the ground floor of the premises no. P-18 at a monthly rent of Rupees 5500/-, payable according to the English Calendar month. The opposite party no. 1 claims to have issued a notice under Section 6(4) of the West Bengal Premises Tenancy Act 1997.

9. The suit for eviction was filed inter alia on the ground of default in payment of rent, reasonable requirement, and violation of Clauses (M), (O), (P) of Section 108 of the Transfer of Property Act.

10. In the application under Order 1 Rule 10(2) of the Code of Civil Procedure the petitioner claimed that the premises no. P-18 Kalakar Street has not been partitioned as the deed of partition dated 03.04.1959 was never acted upon and, therefore, the plaintiff cannot claim ownership of the declared portion of the suit property on the basis of the alleged deed of partition. It is the further case of the petitioner that the petitioner is the owner of half share of premises no. P-18 Kalakar Street and is collecting rent from the opposite party no. 2, and, therefore, is a necessary party, in the suit as the petitioner does not want eviction of the defendant. It was further stated in the said application that there exists a landlord-tenant

relationship between the petitioner and the opposite party no. 2 and the opposite party no. 2 continues to be a monthly tenant under the petitioner.

11. The opposite party no. 1 filed a written objection denying the allegations contained in the application under Order 1 Rule 10(2) of the Code of Civil Procedure. It was specifically stated in the said objection that the opposite party no. 2 is occupying the room on the south western side of the ground floor of the building which falls under the Lot A and Lot B of the property which exclusively belongs to the plaintiff.

12. The question that arises for consideration is whether the petitioner is a necessary party in the instant suit.

13. The instant suit is a suit for eviction. The plaintiff in a suit being dominus litis has a right to choose the persons against whom he wishes to litigate. A plaintiff cannot be compelled to sue a person against whom he does not seek any relief. It, therefore, follows that a person who is not a party has no right to be impleaded against the wishes of the plaintiff. However, Order 1 Rule 10(2) of the Code of Civil Procedure empowers the Court to implead a party.

14. Order 1 Rule 10(2) states that the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant be struck out, and that the name of any person who ought to have been joined, whether as

plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit be added.

15. A bare reading of the said provision makes it clear that the Court may at any stage of the proceedings either upon or without any application direct addition of a party who is found to be a necessary party or a proper party.

16. The Hon'ble Supreme Court in the case of ***Kanaklata Das (supra)*** laid down the principles of law which are to be taken into consideration while considering an application under Order 1 Rule 10(2) of the Code of Civil Procedure in a suit for eviction of a tenant. The Hon'ble Supreme Court held thus-

“11. There are some well-settled principles of law on the question involved in this appeal, which need to be taken into consideration while deciding the question which arose in this appeal. These principles are mentioned infra:

11.1. First, in an eviction suit filed by the plaintiff (landlord) against the defendant (tenant) under the State Rent Act, the landlord and tenant are the only necessary parties. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.

11.2. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff landlord has sought defendant tenant's eviction under the Rent Act exists. When these two things are proved, the eviction suit succeeds.

11.3. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of

relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See *Ranbir Singh v. Asharfi Lal* [*Ranbir Singh v. Asharfi Lal*, (1995) 6 SCC 580] .)

11.4. Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. (See *Ruma Chakraborty v. Sudha Rani Banerjee* [*Ruma Chakraborty v. Sudha Rani Banerjee*, (2005) 8 SCC 140] .)

11.5. Fifth, a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. (See *Udit Narain Singh Malpaharia v. Board of Revenue* [*Udit Narain Singh Malpaharia v. Board of Revenue*, AIR 1963 SC 786] .)

11.6. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, it is not necessary that all the owners/landlords should join in filing the eviction suit against the tenant. (See *Kasthuri Radhakrishnan v. M. Chinnian* [*Kasthuri Radhakrishnan v. M. Chinnian*, (2016) 3 SCC 296 : (2016) 2 SCC (Civ) 331] .)”

17. After laying down the aforesaid principles the Hon’ble Supreme Court held that a co-sharer and/or co-owner with the plaintiff of the suit property is neither a necessary nor a proper party in the suit for eviction filed by the plaintiff against the tenant.

18. In the case on hand the opposite party no. 1 claims that the property has been partitioned by a deed of partition and it is the case of the petitioner that the deed of partition was not acted upon.

19. Thus, the purpose behind filing of the application under Order 1 Rule 10(2) is to raise a dispute as to the title of the opposite party no. 1 in the suit property. It is well settled that the question of title to the suit premises is not germane for the decision of the eviction suit.

20. In an eviction suit filed by the plaintiff (landlord) against the defendant (tenant) the landlord and the tenant are the only necessary parties and in such a suit the landlord plaintiff is required to plead and prove that there exists a relationship of landlord and tenant between the plaintiff and the defendant and that the ground(s) on which the plaintiff landlord has sought for eviction of the defendant tenant exists and if the aforesaid two things are proved the eviction suit will succeed.

21. The subject matter of litigation is eviction of tenant. In an eviction suit, the interse rights relating to the suit premises between the petitioner and the opposite party no. 1 cannot be adjudicated. Addition of the petitioner in a suit for eviction would undoubtedly alter the nature of the suit as the same would introduce a new cause of action which would widen the scope of the suit for eviction.

22. The instant suit has been filed by the opposite party no. 1 claiming to be the landlord against the opposite party no. 2, who according to the

opposite party no. 1 is his tenant. The said suit has been filed on the ground(s) enumerated under Section 6 of the West Bengal Premises Tenancy Act 1997. In such a suit the plaintiff/landlord has to plead and prove only two things in order to get a decree for recovery of possession of the tenanted premises. Firstly, that there exists a relationship of landlord and tenant between the plaintiff and the defendant and secondly, the grounds on which the plaintiff/landlord has sought the eviction of the defendant tenant under the State Act exists.

23. It is well settled that if a person who has no direct interest in the subject matter of litigation and the addition would result in causing serious prejudice to the plaintiff and substitution or addition of a new cause of action would only widen the issue which is required to be adjudicated and settled, the power under Order 1 Rule 10(2) of the Code of Civil Procedure should not be invoked.

24. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay** reported at **(1992)2 SCC 524** wherein it has been held thus—

“18. The courts below have assumed that the subject matter of the litigation is the structure erected by the respondent or in other words the service station which has been allowed to be operated upon by the plaintiff under the terms of the dealership agreement. The notice does not relate to that structure but is in relation to the two chattels stated to have been erected by the present appellant unauthorisedly. According to the appellant these chattels/structures are movables on wheels and plates where servicing and/or repairs are done and used for storing implements of the mechanics. Respondent 2 has no

interest in these chattels and the demolition of the same in pursuance to the notice is not a matter which affects the legal rights of the respondent. The courts below, therefore, failed to note that respondent 2 has no direct interest in the subject matter of the litigation and the addition of the respondent would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which is required to be adjudicated and settled. The joining of the party would embarrass the plaintiff and issues not germane to the suit would be required to be raised. The mere fact that a fresh litigation can be avoided is no ground to invoke the power under the rule in such cases.”

(emphasis supplied)

25. In view of the aforesaid discussion this Court is of the considered view that the learned Trial Judge was right in rejecting the application under Order 1 Rule 10(2) of the Code of Civil procedure filed by the petitioner herein.

26. In ***India Umbrella Manufacturing Company (supra)*** suit for eviction was filed jointly by the co-owners and co-landlords for ejection of the two defendants and there was no partition of the house by metes and bounds. The said decision being distinguishable on facts cannot come to the aid of the petitioner.

27. In ***Mongol Builders (supra)*** two of the co-owners instituted the suit impleading the third co-owners as a defendant. In the said reported decision the suit property was not partitioned. The said decision being distinguishable on facts cannot come to the aid of the petitioner.

28. ***J. N. Real Estate (supra)*** deals with the issue of impleadment of a necessary or proper party in a suit for specific performance of a contract.

The said decision being distinguishable on facts cannot come to the aid of the petitioner.

29. The learned Trial Judge was right in observing that the legality and validity of a partition that took place in the year 1959 and the right, title and interest of the plaintiff/opposite party no. 1 herein flowing from such partition through the deed of conveyance cannot be adjudicated in an eviction suit. The learned Trial Judge rightly applied the proposition of law laid down by the Hon'ble Supreme Court in ***Kanaklata Das (supra)*** to the facts of the case on hand.

30. For all the reasons as aforesaid this Court is not inclined to interfere with the order impugned. Accordingly CO 2526 of 2025 stands dismissed. There shall be, however, no order as to costs.

31. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.-Sanchita, Rumela)