

Court No. 6
(265719)

10.03.2025
(AD 34)
(S. Banerjee)

CO 4261 of 2024

Ujjwal Ghosh & Anr.
Vs.
Kashinath Barman

Mr. Subhendu Bandyopadhyay
Ms. Dipanwita Ganguly
Mr. Pratap Kumar Yadav

...for the petitioners

This application is at the instance of the defendants and is directed against an order being no. 3 dated October 3, 2024 and order being no. 4 dated July 20, 2024, both passed by the learned Civil Judge (Jr. Division), Additional Court, Hooghly in Title Suit No. 247 of 2024. By the order dated July 20, 2024, the application under Order 7 Rule 11 of the Code of Civil Procedure stood rejected and August 8, 2024 was fixed for hearing of the application under Order 6 Rule 17 of the Code. Thereafter the application under Order 6 Rule 17 of the Code was allowed by the order dated October 3, 2024.

The opposite party herein filed a suit for declaration of tenancy right and for permanent injunction restraining the petitioners herein from evicting the opposite party without due process of law.

The petitioners herein filed an application under Order 7 Rule 11 of the CPC praying for rejection of plaint on the ground that the suit property is situated in Panchayat area and that the provisions of West Bengal Premises Tenancy Act, 1997 is not applicable in respect of Panchayat area. The learned advocate draws the attention of the Court to the statement made in the plaint as well as the reliefs claimed thereunder that the opposite party herein has prayed for declaration that he is a tenant under the Act of 1997.

After dismissal of the application under Order 7 Rule 11 of the Code, the learned trial Judge allowed the application under Order 6 Rule 17 of the Code.

Learned advocate appearing for the petitioners submits that after the petitioners herein filed the application under Order 7 Rule 11 of the Code, the application under Order 6 Rule 17 of the Code could not have been allowed by the learned trial Judge.

The fact remains that the application under Order 7 Rule 11 of the Code was rejected on July 20, 2024. The petitioner did not challenge the said order immediately thereafter. This application under Article 227 of the Constitution of India has been filed only after the application under Order 6 rule 17 of the CPC has been allowed.

After going through the schedule of amendment this Court finds that the opposite party herein has sought to amend the plaint by stating that the opposite party is a monthly tenant under the Transfer of Property Act and cannot be evicted without due process of law. The fact remains that the opposite party claimed to be a monthly tenant. The amendment sought for would not amount to changing the nature and character of the suit which remains to be a declaratory suit. The suit is also at the initial stage and the trial has not commenced.

In view thereof, this Court is of the considered view that the learned trial Judge was right in allowing the application for amendment of the plaint. Since a technical error which crept in the plaint has now been rectified by way of amendment of the plaint, this Court is of the considered view that the order rejecting the application under Order 7 Rule 11 of the CPC, does not call for any interference at this stage.

Accordingly, CO 4261 of 2024 stands dismissed without, however, any order as to costs.

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

(Hiranmay Bhattacharyya, J.)