

29.04.2025
Item No.7, DL
Court No.17
AJ.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
C.O. 4446 of 2024
Estate Birendra Kumar Shaw Limited
-Vs-
Archana Paul & Ors.**

Mr. Sounak Bhattacharya,
Mr. Sounak Mandal,
Mr. Anirban Saha Ray,
Mr. Abhirup Halder.
....for the petitioner.

Mr. Meghnad Datta,
Mr. Abhishek Shaw,
Ms. Saswati Manna.
...for the opposite parties.

The instant application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for eviction of trespasser and is directed against Order No. 20 dated April 20, 2024 passed by the learned Judge, VIIth Bench, City Civil Court at Calcutta in the said suit being Title Suit No. 628 of 2020.

The defendant no.1 had died during the pendency of the said suit. The plaintiff had filed an application under Order I Rule 10(2) of the Code of Civil Procedure for expunging the name of the deceased defendant from the cause title.

The defendant no.2 had also filed an application under Order XXII Rule 4 of the Code for substitution of the heirs and legal representatives of the said deceased defendant.

The learned Trial Judge by the order impugned has dismissed the application filed by the plaintiff but has allowed the application filed by the defendant no.2.

Mr. Bhattacharya, learned Advocate for the petitioner submits that the father of the deceased defendant no.1 was the original tenant of the suit property, after his death, five years have elapsed, as such by the operation of Section 2(g) of the West Bengal Premises Tenancy Act, 1997, the deceased defendant no. 1 had lost the protection of tenancy, that being the

position, the learned Trial Judge has committed error of law in allowing the said application.

Mr. Meghnad Datta, learned Advocate for the opposite parties submits that the original tenant of the suit property was the partnership firm of the father of the deceased defendant no. 1 and the father of the defendant no. 2. On the death of the said partners, by virtue of a registered instrument, a fresh tenancy was created and the rents were paid. The defendant no. 1 could not file his written statement as he had died immediately after the receipt of summons but the defendant no. 2 did. In his written statement, the said defendant has elaborately disclosed creation of a new tenancy. In view of creation of such tenancy, the heirs and legal representatives of the deceased defendant no.1 have been rightly substituted in the suit.

Heard the learned Advocates for the parties, perused the materials-on-record.

On perusal, it appears that the averments of the plaint fail to depict a clear picture regarding devolution of the tenancy so as to attract the provision of Section 2(g) of the said Act of 1997, the suit, at best, can be a suit for eviction of trespasser simplicitor. In such a suit, on the death of one of the defendants, his heirs and legal representatives are required to be substituted, therefore, this Court is of the view that the learned Trial Judge has not acted with illegality and/or material irregularity in allowing the said application for substitution, for the said reason, the order impugned does not call for any interference.

C.O. 4446 of 2024 is accordingly dismissed without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)