

16.06.2025

Court No.1

Item No.7

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**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION**

**SAT 19 of 2024
IA No.CAN 1 of 2025**

**Sri Surajit Das @ Surijit Kumar Das & Ors.
versus
Basanti Banik & Ors.**

Ms. Suman Sehanabis (Mandal)
Mr. Salok Sah,
Ms. Anwasha Chakraborty,
Ms. Aritri Chakraborty,

....for the appellants.

This second appeal arises out of the judgment and decree dated 18th April, 2024 passed by the learned District Judge, Cooch Behar in Title Appeal No.25 of 2014. The said title appeal arose out of a judgment and decree dated 20th May, 2014 passed by the learned Civil Judge (Junior Division), Additional Court, Sadar, Cooch Behar by which the suit for declaration and injunction filed by the tenants was dismissed. The suit was originally filed by Ajit Kumar Das and Ranjit Kumar Das, the original tenants. During the pendency of the suit, the said Ajit Kumar Das died intestate on 20th March, 2012 and as such his three sons and the widow were substituted as the plaintiffs. Ranjit Kumar Das was a bachelor and died intestate on 6th October, 2012. With

the death of the tenants, the suit which was filed after promulgation of the West Bengal Premises Tenancy Act, 1997 (in short 'WBPTA', 1997) continued inter alia under the provisions of Section 2 (g) of the said Act. Three sons being the substituted plaintiff nos. 1, 2 and 3 on satisfying the twin conditions that they ordinarily resided with the tenants and were dependent upon any one of the original tenants had the right of residence in the tenanted property for a period of five years from the death of the tenants provided they did not own or occupy any residential premises. The widow, however, in view of the proviso to Section 2(g) on satisfying the aforesaid twin conditions had the right of residence till her life provided she did not own or occupy any residential premises.

On a perusal of the plaint, it appears that the right of the spouse (widow) being different from the other legal heirs of the deceased tenant namely, Ajit Kumar Das was not pleaded at all. No evidence was also laid either by the sons or the spouse to prove the twin conditions as aforesaid and that they did not own or occupy any residential premises. The suit ultimately failed on contest. The Trial Court has recorded the reasons after analyzing the evidence while passing its judgment and decree dated 20th May, 2014. Before the First Appellate Court, the appellants who are incidentally also the appellants in this second appeal

urged in one of its grounds being ground number 6 which is as follows:

“6. For that the Ld. Trial Court ought to have held that the defendants could not establish the fact that the wife of Ajit Das occupy on any residential premises of her own.”

No specific ground as to the right of the spouse was specifically taken.

The appellants also made an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (in short CPC) for adducing additional evidence. The ground on which the additional evidence was sought to be adduced that the appellants being the plaintiffs in the suit could not adduce the evidence of prime witness i.e., the widow (appellant no. 4 herein) and the legal heirs i.e., the sons of the original plaintiff Ajit Kumar Das. It is the case of the appellants that the First Appellate Court did not afford the appellants an opportunity to adduce additional evidence. The said application was kept pending and was ultimately rejected along with the impugned judgment and decree of the First Appellate Court. The appellants say that there exists a substantial question of law with regard to the right of the appellant no. 4, being the spouse of one of the original tenants and also as to the rights of the appellant nos. 1, 2 and 3.

After hearing the appellants and considering the materials on record, we find that after the death of

Ranjit Kumar Das, the three sons of Ajit Kumar Das were his legal heirs under the provisions of Section 8 of the Hindu Succession Act, 1956 read with the Schedule thereunder. On the death of Ajit Kumar Das, his sons respectively being the appellant nos. 1, 2 and 3 had a right of residence to stay at the tenanted property on satisfying the twin conditions that they were ordinarily residing with their father and were dependent on him as held by Coordinate Bench of this Court in the judgment reported in (2016) 3 CHN 472 [Prasun Chakraborty Vs. Smt. Indira Jaiswal] apart from the fact that they did not own or occupy any residential premises. Their right as the heirs of Ranjit Kumar Das was the same.

The appellant nos. 1, 2 and 3 therefor, were required to adduce evidence that they resided with Ajit Kumar Das or Ranjit Kumar Das in the tenanted premises at the time of his death and they were all dependent on the said tenants or on any one of them. The appellant nos. 1, 2 and 3 have not taken the pain to adduce their evidence though it was open to them on having been substituted as plaintiffs pursuant to the death of their father Ajit Kumar Das on 20th March, 2012.

We do not find any fault in the judgment of the Trial Court dated 20th May, 2014 as the Trial Court proceeded on the basis of the averments made in the plaint and the evidence adduced. It was also open to

the widow (appellant no. 4) to specifically plead the exception contained in the proviso to Section 2(g) of the WBPTA, 1997 that she had a right of residence in the tenanted premises for her life. No averment was made by amending the plaint after she was substituted. The appellant no.4 also did not adduce evidence. Even though it is well settled that no amount of evidence can be looked into de hors the pleadings, then also if the appellant no.4 had adduced evidence to satisfy the twin conditions that at the time of death of her husband she was residing at the tenanted premises and was dependent on him and also did not have any other place of residence, then the Trial Court could have discussed this issue. That apart and in any event, local inspection took place where the Commissioner so appointed found that the premises in question was in dilapidated condition and the original tenants neither paid rent after 2002 nor did they reside thereat. We also do not find any other infirmity in the judgment and decree of the Trial Court on this context.

During the pendency of the appeal, the five years cap available under Section 2(g) to the appellant nos.1, 2 and 3 had expired. The said appellants, therefore, lost their right to stay at the tenanted premises even if they had proved the twin conditions. The appellant nos.1, 2 and 3 as on date, therefore, do not have the right available under Section 2(g) because the five years time

period commencing from 20th March, 2012 or from 6th March, 2012 had expired in the year 2017. So far as the appellant no.4 is concerned, in the absence of pleading and evidence being adduced to satisfy the twin conditions envisaged under Section 2(g) of the WBPTA, 1997 and that she did not have alternative residence, her right cannot be also looked into at this stage after return of concurrent findings by the Trial Court and the First Appellate Court. We also do not find any infirmity in the reasons given by the First Appellate Court for rejecting the application under Order XLI Rule 27 of CPC made by the appellants. The judgment and decree of the First Appellate Court is a well reasoned one after minute appreciation of evidence led before the Trial Court, The First Appellate Court has confirmed the findings of the Trial Court and we have no reasons to differ.

In the aforesaid facts and circumstances, we do not find any substantial question of law for which the second appeal is required to be admitted.

The appeal and the application for stay are, therefore, dismissed.

(Arindam Mukherjee, J.)

(Partha Sarathi Chatterjee, J.)