

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

Present :-

**The Hon'ble Justice Sabyasachi Bhattacharyya
and**

The Hon'ble Justice Supratim Bhattacharya

Case No.

FAT554 of 2025

with

CAN 1 of 2025

In the matter of :

ASHOK KUMAR GUPTA

...Appellant

VS.

MD. SHAHNAWAZ & ORS.

...Respondents

For the Appellant

: Mr. Krishna Das Poddar

....Advocate

**For the Plaintiffs/
Respondents**

**: Mr. Anirban Roy
Mr. Debjit Basu**

....Advocates

Heard on

: 23.03.2026

Judgment on

: March 23, 2026.

Sabyasachi Bhattacharyya, J. :-

1. As per previous direction, the appeal and the application are taken up for hearing together.

2. The present appeal has been preferred against a decree of eviction granted against the defendant/appellant on the ground that upon the demise of the original tenant, one Mangatrai Gupta, that is, the predecessor-in-interest of the present appellant, by operation of Section 2(g) of the West Bengal Premises Tenancy Act, 1997, after the expiry of five years from such demise, the status of the present appellant, being an heir of the original tenant, came to an end and he was rendered a trespasser in respect of the subject property.
3. Learned counsel for the appellant argues that in the written statement and from the evidence adduced by the defendants, it would be evident that before his demise in the year 2005, the original tenant Mangatrai Gupta had handed over the tenancy rights and possession to one of his sons, namely, the appellant Ashoke Kumar Gupta. Thus, it is submitted that since the said Ashoke Kumar Gupta has been running his business from the suit property all along on the strength of the rights created in his favour by his father, at the worst, he could be deemed as a sub-tenant but, having claimed independent rights by dint of handing over of the tenancy rights of Ashoke Kumar Gupta in his favour, the present appellant's rights to the suit property are not

merely in the capacity of an heir of the original tenant and, thus, are not covered by Section 2(g) of the 1997 Act.

4. Learned counsel appearing for the plaintiffs / respondents submits that in the meantime, in execution of the impugned decree, possession has already been taken by the plaintiffs in respect of the suit property.
5. It is further submitted that the plaintiff made out a clear case of operation of Section 2(g) of the 1997 Act.
6. Even otherwise, it is submitted that the appellant failed to establish before the learned Trial Judge that he was a dependant of the original tenant at the time of the latter's demise, thus not even having the protection of five years from the demise of the tenant as prescribed under Section 2(g) of the 1997 Act, an essential prerequisite of which is that the person continuing in possession, to have the protection of the said provision, has to be a dependant of the original tenant in the first place.
7. Upon a perusal of the impugned judgment and decree and on hearing learned counsel for the parties, we find that the frame of the suit was clearly on the premise that on the expiry of the statutory five years' moratorium from the demise of the original tenant Mangatrai Gupta in the year 2005, which was after coming

into force of the 1997 Act, Section 2(g) kicked in and the defendants were rendered trespassers.

8. In addition, it was also pleaded in the plaint that even if the defendants were proved to be sons of the deceased tenant, they would not come within the definition of “tenant” under the 1997 Act.
9. We find from the discussions of the learned Trial Judge in the impugned judgment as well as the materials on record that no independent case of tenancy having been granted to the defendants by the plaintiff/landlord has been made out.
10. Although it has been pleaded in paragraph no.15(b) of the written statement that the father of the defendants Mangatrai Gupta had, before his death, “handed over the said tenancy right and possession” to the present appellant, the unilateral handing over, even if any, cannot be given the seal of legality without the concurrence of the landlord. Also, no document to that effect was produced by the defendant/appellant.
11. The argument of the appellant to the effect that the appellant does not claim only as the heir of the original tenant but in his independent capacity as a sub-tenant cannot also hold its ground, since no specific proof of grant of a lawful sub-tenancy to the

appellant was made out. In any event, if the appellant claims as a sub-tenant, the said sub-tenancy could only be through the original tenant, with whose demise in the year 2005 such sub-tenancy would also have been terminated, thereby, in any event, rendering the appellant a trespasser.

12. In view of the above considerations, we do not find any deficiency or illegality in the impugned judgment and decree of the learned Trial Judge, since the learned Trial Judge correctly proceeded on the premise that by operation of Section 2(g) of the 1997 Act, even if the defendants were dependants (which they are not, in view of the claim of the appellant that he has been running a commercial business in the suit property all along), the defendants would have been rendered trespassers after expiry of five years from the date of demise of the original tenant in the year 2005.
13. Accordingly, the appeal fails.
14. Hence, FAT 554 of 2025 is dismissed on contest without any order as to costs, thereby affirming the impugned judgment and decree dated April 22, 2025 passed by the learned Judge, Twelfth Bench, City Civil Court at Calcutta in Title Suit No.1423 of 2013.
15. Consequentially, CAN 1 of 2025 stands disposed of as well.

16. A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

23.03.2026

Item no. DL 21

Court No. 16

Asraf, A.R.(Ct.)