IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

S.A.T. 128 of 2024

With

IA No.: CAN/1/2024, CAN/3/2025

Shakil Ahmed & Anr.

VERSUS

Sk Jahar Hossain

For the appellants: Mr. Supratik Shyanal, Adv.
Sk. Afazuddin, Adv.

For the respondent: Mr. Tarak Nath Halder, Adv.

Last Heard on: October 14, 2026

Judgment on: November 23, 2026

Biswaroop Chowdhury, J:

The appellant before this Court was a defendant in a suit for eviction and is aggrieved by the Judgment and Order dated 14th May 2024 passed by Learned Additional District Judge 2nd Court Sealdah in Title Appeal No-53/2023 where Learned First Appellate Court reversed the Judgment and Decree passed by Learned Civil Judge (Junior Division) Additional Court Sealdah in Title Suit No. 500 of 2022.

The case of the appellant/defendant before the Learned Trial Court may be summed up thus:-

1. The instant suit is not maintainable and barred by Law.
2. The plaintiff has no cause of action for the instant suit against the defendants.
3. The Learned Court has no jurisdiction to try and entertain this suit.
4. The plaintiff has specifically stated in his statements in the plaint that the suit premises is a thika tenanted premises as such the plaintiff has no right to file the instant suit against the defendant no-1 and no-2 which is barred by law under Section 21 and Section 8(3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 as amended and as such this Learned Court has no jurisdiction to try and entertain the suit which should be nipped in the bud and rejected as the cognizance of which is impliedly and expressly barred by the statute.
5. The suit be dismissed as non-maintainable.

The plaintiff/respondent contested the application by filing written statement.

The Learned Trial Judge was pleased to allow the application filed by the appellant/defendant under Order 7 Rule 11 of the Code of Civil Procedure by observing the suit as barred under the provision of West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 and was pleased to reject the plaint.

The plaintiff/respondent being aggrieved by the Learned Trial Judge was pleased to dispose of the appeal by observing and during as follows:-

'Accordingly it is ORDERED that the instant Appeal be and the same is allowed on contest without costs. The Order no. 7 dated 21.08.2023 passed by the 1d. Trial Court is set aside. The petition dated 22.02.2023 under Order VII Rule 11 of CPC filed by the defendant is rejected on contested without costs.

The case record of Title Suit No. 500/2022 is sent to the Court of Ld. Civil Judge (Jr. Division) Additional Court Sealdah with a direction to proceed in accordance with law from the stage where it was dismissed. Opportunity be given to the defendant to submit written statement within reasonable time.

Both parties are directed to appear before the Court of Ld. Civil Judge (Jr. Division) Additional Court Sealdah on 05-06-2024.

Let a copy of this Judgment along with the Trial Court record be returned to the Court of Ld. Civil Judge (Jr. Division) Additional Court Sealdah.

The instant appeal is thus disposed of.'

The Appellant/defendant being aggrieved by the Judgment and Order passed by Learned 1st Appellate Court has come up with the instant second Appeal.

The Hon'ble Division Bench by Order dated 28-11-2024 was pleased to admit the appeal and formulate the following substantial questions of law;

a) Whether the suit for eviction of Bharatiya at the behest of the thika tenant is maintainable before the Civil Court by reason of Section

8(1) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001.

b) Whether a suit for eviction of a bharatiya by the thika tenant is required to be filed before the Thika Controller irrespective of the fact that the said tenancy is governed by the West Bengal Premises Tenancy Act 1997?

c) Whether the forum provided in an Act which has been brought within the ambit of an another Act by reference gets diluted by a specific provision contained in the another Act?

Upon hearing the learned Advocate and considering the facts of the case following additional question of law is framed by order dated 16.02.2026.

d) Whether Civil Court has the jurisdiction to decide a suit filed against defendant alleging him to be a trespasser in a thika land. Although there are conflicting Judgments as to whether second Appeal lies from Order of remand passed by First Appellate Court or second Appeal lies from the order, which is revisable order this Court is of the view that as the Hon'ble Division Bench has admitted the second appeal and formulated the questions of law on which the second Appeal is to be heard out it would not be reasonable to ignore the said order and hold that the second appeal is not maintainable.

Moreover neither of the parties have moved before the Hon'ble Division Bench for review of the order nor preferred any appeal against the same nor

raised the question of maintainability before this court it is incumbent upon this Court to hear out and decide the appeal argued by the parties on merits.

Learned Advocate for the appellant submits that although a petition under Order 7 Rule 11 CPC has to be considered in the light of the pleadings of the plaint but it is also to be seen that whether by clear drafting the plaintiff has brought cause of action. Learned Advocate relies upon the following decision of the Hon'ble Supreme Court T. Arivandandam Versus TV. Satyapal and another reported in AIR 1977. S.C. 2421. The Hon'ble Supreme Court in the decision observed as follows:-

'We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the Court repeatedly and unrepentantly resorted to....the learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage...."

Learned Advocate further submits that the status of 'Thika tenant' of the plaintiff and status of 'Bharatiya' of defendant's father is the plinth of the

plaint. The plaintiff has other right to sue the defendant except as a thika tenant against the son of a bharatiya. Controller has the power to decide as to whether a person is a 'Thika tenant' or not in terms of Section 5(3) of the West Bengal Thika Tenancy [Acquisition and Regulation] Act 2001 (hereinafter referred to as 2001 Act) and power to decide whether a person is 'bharatiya' under the thika tenant in terms of Section 8[2] thereof. The Learned Civil Courts jurisdiction is barred from deciding such questions in terms of Section 21 of the 2001 Act read with Section 9 of CPC.

Learned Advocate also submits that first in terms of Section 3[e] and 3[f] the word 'tenant' under 1997 Act excludes a part or Section of persons who pay rent to the landlord out of the purview of 1997 Act on the ground that they pay more rent than a fixed amount as prescribed under that statute. The word 'Tenant' under Section [2g] of 1997 Act does not cover all 'bharatiyas' under 2001 act and hence inapplicable.

Learned Advocate relies upon the distinctions between different provisions of West Bengal Thika Tenancy [acquisition and regulation] Act 2001 and West Bengal Premises Tenancy Act 1997.

It is submitted by the Learned Advocate that suit for eviction of a Bharatiya at the behest of the thika tenant is not maintainable before the Civil Court and thus question no-1 should be answered in the negative.

It is further submitted that the forum (controller) provided in 2001 Act which has been brought within the ambit of 1997 Act by reference did not get

diluted by a specific provision contained in the 1997 Act for the reason that 'Bharatiya' under 2001 Act have been given much superior rights and interest both present and future than what has been envisaged as 'tenant' under 1997 Act.

It is also submitted that there is a fundamental difference in the rights and interests of a thika tenant and bharatiya under the 2001 Act on one hand and Landlord and the tenant under the 1997 Act on the other. Under the 2001 Act the Thika Tenant is never the owner of the land and the ownership of land lies with the government. The thika tenant is an occupier under the government under Section 5(1) of the 2001 Act.

Learned Advocate for the appellant relies upon the decision of the Division Bench of this Hon'ble Court in the case of Imtiazul Haque VS Reyaz. Ahmed @ Wasim FAT-257 of 2023. The Hon'ble Division Bench in the said case observed as follows:-

"7. Admittedly the appellant/plaintiff has filed application under Section 5(3) before the Thika controller for expunging the name of the respondent/defendant as a Thika Tenant in respect of the said property.

8. What is clear and evident from a plain reading of the averments in the plaint is that the property itself is admittedly a thika property within the meaning of the Act 2001. The appellant has been living in the property since his birth and has admitted that his father was the 'bharatiya' within the meaning of the said Act of 2001.

9. In view of the clear and unequivocal admissions in the plaint as above there was no impediment on the Court below in deciding as to whether the suit in question was hit by the provisions of Section 21 of the aforesaid Act 2001. There was no need for any trial. It is now well settled that in an application under Order VII Rule 11(d) only the averments in the plaint are required to be considered and nothing else can be looked into.

10. In view of the above, the finding of the Court below that any dispute with regard to a thika property within the meaning of the 2001 Act cannot be faulted.'

Learned Advocate further refers to the decision of the Division Bench of this court in the case of Krishna Show VS Netai Pandit reported in 2016(3) CHN (CAL) 1 where the Hon'ble Division Bench observed as follows:-

'14. As such we have no hesitation to hold that both the Act and the Rule were in operation at the time when the suit was filed. Considering the aforesaid provisions of the said Act as well as the Rule framed therein, we have no hesitation to hold that an eviction suit filed by the thika tenant for evicting the bharatia lies before the Controller appointed under Section 9 of the said Act. Such suit will not lie before the Civil Court even though the West Bengal Premises Tenancy Act provides for maintaining such suit before the Civil Court for the simple reason that the West Bengal the West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 received the assent of the Governor on

22nd November 2002. i.e. subsequent to the grant by the Governor to the West Bengal Premises Tenancy Act 1997 on 10th July 2001.

15. Since it is well settled that when the provision of two states Acts contradicts with each other the provision of the latter Act will prevail over the other for the simple reason that while considering the latter Act the Governor had before His excellancy all the earlier Acts and despite noticing the contrary provision contained in the earlier Act, the Governor was pleased to grant assent to the latter Act and thereby expressing His excellency's desire to implement the latter Act.

16. Following this principle we hold that the suit for eviction of a Bharatia by the thika tenant will lie before the Controller appointed under Section 9 of the said Act.

17. As such we hold that the learned Appeal Court did not commit any illegality in holding that the suit is not maintainable before the Civil Court where it was filed.'

It is submitted by the Learned Advocate that the decisions of this Hon'ble Court in the case of Jamal Akhter VS Abdul Majid and Jamil Akhter VS Asit Chatterjee are not applicable to the facts of the case as because license or occupation beyond Bharatia is unknown to the scheme of 2001 Act.

Learned Advocate for the respondent/plaintiff submits that the plaintiff/respondent herein filed a suit for recovery of possession against the

defendants/appellants herein treating them as trespassers. The defendants/appellants herein in connection with the aforesaid suit filed an application under Order 7 Rule 11 of the Code of Civil Procedure inter-alia praying for rejection of plaint in view of the fact of creation of bar under Section 21 and Section 8(3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 plaintiff/respondent herein contested the aforesaid application by filing written objection contending that the instant suit for recovery of possession has been sought for in respect of the suit premises treating the defendants/appellants herein as trespassers under the general law and the provision of Section 21 and 8(3) of the West Bengal Thika Tenancy Act 2001 has no manner of application in the instant case.

The learned trial judge by order/judgment dated August 21 2023 was pleased to allow the said application and reject the plaint. The respondent/plaintiff being aggrieved preferred an appeal against the said order. The Learned Appellate Court was pleased to set aside the Order passed by the Learned Trial Judge.

Learned Advocate further submits that West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 came into effect on March 1, 2003 prior to coming into effect of this Act, all kinds of suit for eviction either in respect of khas property or in respect of thika property were getting adjudicated by the Civil Court. The aforesaid Act prescribes that certain disputes are to be adjudicated by the Controller after coming into operation of this Act.

Learned Advocate also submits that Section 8(3) of the statute prescribes that dispute regarding payment of rent by the thika tenant to the State Government or by a bharatiya to a thika tenant or case of eviction of bharatiya shall be adjudicated by the Controller. The instant suit has been filed for recovery of possession treating the defendants/appellants herein as trespassers under the Transfer of Property Act 1882. So in no stretch of imagination it can be tried by the Controller.

It is submitted that Section 8(1) of the Act prescribes applicability of West Bengal premises Tenancy Act 1997 in respect over thika land. In view of applicability of West Bengal Premises Tenancy Act Section 2(g) of the Act applies in the instant case.

Learned Advocate relies upon the decision of this Court in the case of Md. Jamil Akhter VS Abdul Majid reported in 2011(1) CLJ. 308. In the said decision it is observed as follows:-

'After hearing the learned Advocate for the parties and after considering the materials on record this court does not find any illegality in the impugned order as it is rightly held by the learned Trial Judge that the suit for eviction of a licensee by the licensor is not hit either under Section 8 Sub-Section (3) or under Section 21 of the said Act as both the aforesaid provisions created a bar in maintaining a suit between the thika tenant and bharatiya before the Civil Court without reference to the suit for eviction of a licensee by the licensor. As such the present suit in my view is maintainable before the Civil Court.'

Learned Advocate further relies upon a decision of this Court in the case of Sri Gauranga Talukder VS Sri Tarak Nath Mondal and Anr. (CO. 4228 of 2025). In the said decision it was observed as follows:-

'9. On careful reading of the provisions of law as discussed by the respective learned advocates for the parties as mentioned above and the judgments as mentioned above, this Court is of the considered opinion that after expiry of five years period from date of death of his father, that is the original bharatiya under the defendant/thika tenant, the plaintiff petitioner ceases to have any right under statute as his legal heir, to continue with his possession over the said thika tenanted property over which his deceased father has been possessing as a bharatiya. Thus the opposite party/defendant has tried to emphasize and justifiably so, that after five years of date of death of the predecessor-in-interest who has been a bharatiya under the Act the status of the successor in respect with the said property comes to be that of a trespasser. A trespasser has no legal relationship with either the state or the Thika tenant. They do not qualify as a bharatiya or a tenant under the statutory definations of the Act.'

Learned Advocate also relies upon the decision of this Court in the case of Sri Manik Das VS Pramila Das and ors. (C.O. 1605 of 2022). In the said case it was observed as follows:-

'It cannot be disputed the Thika Tenancy Act confers exclusive jurisdiction upon the controller regarding the dispute between Thika Tenant

and Bharatiya tenant. However though the suit for eviction may not be maintainable against the Thika Tenant, but a suit against the trespasser would not be barred under Thika Tenancy Act. In order to ascertain the maintainability of the suit the Court is required to go into the pleadings of the parties.'

Before proceeding to decide on the issue it is necessary to consider the provisions contained in Section 8(3) of West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001.

Section 8 Sub-Section 3 of the statute provides as follows:-

As per Section 8(3) of the statute any dispute regarding payment of rent by the Thika tenant to the state Government or by a Bharatiya to a thika tenant or any case of eviction of Bharatiya shall be disposed of by the controller in such manner as may be prescribed.

Thus the provision contained in Section 8(3) of West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 provides adjudication of despute with regard to eviction of a Bharatiya by the Controller. However the said provision does not contain any clause that eviction of trespasser by Thika Tenant is to be adjudicated by the controller.

Upon plain reading of the plaint it appears that the plaintiff/respondent treated the appellants/defendants as trespassers and not as Bharatiyas thus it cannot be said that Controller will have jurisdiction to adjudicate the dispute.

The plaintiff/respondent has specifically stated as to why the defendants/appellants are trespassers to the suit property in view of Section 2(g) of the West Bengal Premises Tenancy Act 1997, which is also applicable to a bharatiya under Section 8(1) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001. The defendants/appellants could not justify as to how the contentions made by the plaintiff/Appellant is false neither the appellant/defendant could show that they continue as a bharatiya under the Provisions of West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001.

Thus it cannot be said that from the plain reading of the plaint it appesrs that the suit is barred by law.

In the event the defendants/appellants claim their right as bharatiya in the suit property they are to file written statement raising such claim and prove the same in accordance with law. In the event the defendants/appellants succeed in proving their status as bharatiya the suit will become non-maintainable before Civil Court. Prior to such issue being decided it cannot be said suit is not maintainable.

In view of the discussion made hereinabove the first and second question formulated is answered in favour of the appellant. However the third question is answered against the appellant.

In view of the third question answered against the appellant the appeal fails and the same stands dismissed.

Hence this Appeal SAT 128 of 2024 stands dismissed. The Judgment and Order dated 14th May 2024 passed by Learned Additional District Judge 2nd Court Sealdah in Title Appeal No-53/2023 stands affirmed. The matter is remitted to the Learned Civil Judge (Junior Division) Additional Court Sealdah to decide Title Suit No-500/2022 is accordance with law. The defendants/appellants are permitted to file the written statement within 6 weeks. However in the event of exceptional circumstances the same may be extended by the Learned Trial Court for 2 weeks. It is however made clear that the decision of this Court is with regard to the merits of the application under Order VII Rule 11 of the Code of Civil Procedure and not with regard to the merits of the suit. Learned Trial Court shall decide the suit in accordance with law.

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

(Biswaroop Chowdhury, J.)