

M/L- 467
08/01/2026
Ct. No.-19
Aritra

RVW 232 of 2025
In
CO 2222 of 2025
Mukhtar Ehsan Khan
Vs.
Sk. Akhtar Hossain & Anr.
With
CAN 1 of 2025

Mr. Surendra Kumar Sharma

....for the review applicant

Mr. Tarak Nath Halder
Mr. Abdul Alim

....for the opposite party

This is an application for review of the order dated June 30, 2025. By the order dated May 8, 2025 passed by the learned Civil Judge (Jr. Div.), 3rd Court, Howrah in Title Suit No.49 of 2009 the application filed by the review applicant praying for dismissal of the suit as not maintainable was rejected.

The learned advocate for the review applicant submits that the Hon'ble Division Bench in WPLRT 61 of 2022 was pleased to set aside the order of the West Bengal Land Reforms Tenancy Tribunal as well as the order of the Thika Controller. He submits that the Hon'ble Division Bench held that the tribunal committed error in remanding the matter to the Thika Controller for deciding the status of the private respondent therein or the property as thika by overlooking the decree of the competent Civil Court.

The learned advocate appearing for the review applicant submits that there is an error apparent on the face of the order under review as the observations of the Hon'ble Division Bench in the order dated July 4, 2022 passed in WPLRT No.61 of 2022 as to the correctness of the decree passed in Title Suit No.07 of 1991 was not considered. He further contended that the order under review suffers from error apparent on the face of the record as it did not consider that the opposite party is not thika tenant in respect of the suit property.

The review applicant filed a Title Suit No.07 of 1991 praying for declaration of title and for mandatory injunction against one Smt. Rasulan Bibi and others. The said suit was decreed *ex parte* against the defendants of the said suit by a judgment and decree dated July 15, 1994. The opposite party herein claims to have acquired right in respect of the property by virtue of a Will dated March 15, 1999, executed by Rasulan Bibi. The opposite party herein filed the instant suit being Title Suit No.49 of 2009 praying for a declaration that the decree passed in Title Suit No.07 of 1991 is fraudulent, illegal, nullity and not binding upon the opposite party. The case made out in the said suit is that the decree in Title Suit No.07 of 1991 was obtained by practicing fraud as summons of the said suit was not served upon Rasulan Bibi.

The review applicant filed an application challenging the maintainability of the suit. The ground of objection

was that the efficacy of the judgment and decree passed in Title Suit No.07 of 1991 has been tested by the Hon'ble Division Bench in WPLRT No.61 of 2022 wherein it was held that the judgment and decree passed in Title Suit No.07 of 1991 is effective. Farida Begum, who according to the review applicant is a necessary party was not impleaded in the instant suit and the suit is barred by limitation.

The propriety of the order dated September 18, 2007 passed by the Controller, Howrah Thika Tenancy declaring the opposite party No.1 herein as a thika tenant was challenged before the West Bengal Land Reforms and Tenancy Tribunal in O.A. No.127 of 2010 (LRTT). The learned tribunal by an order dated February 11, 2022, after setting aside the order dated September 18, 2007, sent the case on remand with a direction to re-hear the case affording opportunity of hearing to all interested parties. The order dated February 11, 2022 was challenged in WPLRT No.61 of 2022.

The Hon'ble Division Bench in the order dated July 4, 2022, passed in WPLRT No.61, 2022 held that it is no longer *res integra* that during subsistence of the Act of 1981, the Civil Court has the jurisdiction to declare the status of a person and having declared so it is not open even to a Thika Controller to controvert the same. It was further held that the statutory authority is bound by the decree passed by the Civil Court so long it is operative,

subsisting and in force. In the light of the aforesaid observations, the order of the learned tribunal and the Thika Controller was set aside.

The Hon'ble Division Bench did not comment on the maintainability of Title Suit No.49 of 2009 even after noting that such suit is pending.

In the judgment under review, this Court observed that the issue of maintainability of the present suit did not fall for consideration before the Hon'ble Division Bench and since other disputed question of law and fact were raised in the impugned application, this Court observed that the learned trial judge was right in holding that the points raised by the defendant No.1 are mixed questions of law and fact which need to be adjudicated.

This Court also passed a direction for expeditious disposal of the suit. This Court does not find any error apparent on the face of the record.

Accordingly, RVW 232 of 2025 along with CAN 1 of 2025 stands disposed of.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)