

CO. 3277 of 2025

19.06.26
D/L
Sl-06
Ct. 06
(Samar)

Sri Ramlakhan Jaiswal
Vs.
Sri Shyam Narayan Jaiswal

Mr. Asit Baran Raut,,
Mr. Tuhin Sbhra Raut,
Ms. Ishita Raut,
... for the petitioner.

Ms. Sumita Shaw,
Ms. Anita Gaur,
Mr. Soumen Chatterjee,
Mr. A. Bakhteyar
....for the opposite party.

1. Affidavit of service filed in Court today is taken on record.
2. This revisional application is directed against an order dated August 05, 2025 passed by the learned Civil Judge (Senior Division), Sealdah in Ejectment Suit No. 14 of 2015 whereby the petitioner's application for expunction of the name of the defendant no. 2 from the Cause Title of the plaint has been rejected.
3. The petitioner has instituted Ejectment Suit No. 14 of 2015 for eviction of the opposite party no. 1 as well as one Satya Narayan Jaiswal who passed away during the pendency of the suit.
4. After the death of the said Satya Narayan Jaiswal, (who was arrayed as the defendant no. 2), the petitioner filed an application seeking expunction of

the name of the said deceased defendant asserting that the tenancy was joint in nature and as such the heirs and legal representatives of the defendant no. 2 were not required to be brought on record by way of substitution.

5. Such application was contested by the opposite party no. 1. The learned Trial Court after a contesting hearing has dismissed the petitioner's application and held that the suit has abated against the defendant no. 2.
6. Mr. Raut, learned advocate appearing for the petitioner submits that since it is the clear case of the defendants in the joint written statement that the defendants inherited the tenancy upon the death of the original tenant, the status of the tenancy is joint in nature. It is submitted that since it a joint tenancy, therefore upon the death of one of the joint tenants, the tenancy would pass on to the surviving tenant and the right to suit would survive as regards the surviving tenant.
7. He has produced before this Court a copy of the amended written statement filed by the defendants in the suit jointly wherein at paragraph 23, the following is averred: *"The present defendants further state that said Parbati Devi Shaw paid the rents till Janujary, 2007 to Duija Devi Shaw and Duija Devi Shaw accordingly issued rent receipts in the name of*

Parbati Devi Shaw. In this context, it is pertinent to mention hereon 16.01.2007 after demise of said Parbati Dvi Shaw the present defendants namely 1) Shyam Narayan Jaiswal @ Shaw and 2) Satya Narayan Jaiswal Shaw being the legal heirs and only two sons of said Parbati Devi Shaw became the tenants of the aforesaid tenancy and after demise of their mother said Parbati Devi Shaw, the present defendants, as the tenant and enjoyed the tenancy in respect of the.....” (Emphasis supplied) .

8. In support of his contention that upon the death of the original tenant the heirs of the original tenant succeed as joint tenants, he relies on a judgment of the Hon’ble Supreme Court in the case of **H.C. Pandey V. G. C. Paul** reported at **AIR 1989 SC 1470**.
9. In support of his contention that upon the death of one of the joint tenants, the joint tenancy would pass on the surviving joint tenant and the right to sue would survive, he relies on the following judgments:-
 - i) **Smt. Daisy Mantosh Vs. Sri Nemchand Saraogi & Anr.** reported at **2001 (1)CLJ P. 225**.
 - ii) **Kamal Prasad and Ors. V. District Judge, Allahabad & Ors.** reported at **2006 AI HC 1891**.

iii) Unreported judgment of a Co-ordinate Bench of this Court in ***Sri Pratim Ghosh Vs. Shivji Sharma (CO 261 of 2020)*** delivered on **20.3.2024.**

10. Ms. Shaw, learned advocate appearing for the opposite party submits that the order impugned has been correctly passed. It is submitted that the heirs of the deceased joint tenant must be substituted as parties to the suit for eviction and if such substitution is not done, the suit cannot be proceed with further. She relies on Section 2(g) of the West Bengal Premises Tenancy Act, 1997.

11. Having heard learned advocates appearing for the respective parties and having considered the material on record, this Court of the view that the learned Trial Court has committed a serious error in dismissing the petitioner's application for expunction of the name of the defendant no. 2 and holding the suit to have abated against the said defendant.

12. As would be evident from the averments in the amended written statement filed by the defendants jointly, the defendants inherited the tenancy from the original tenant. In such view of the matter, as authoritatively pointed out by the Hon'ble Supreme Court in the case of ***H.C. Pandey*** (supra), on the death of the original tenant the

incidence of tenancy would devolve on the heirs the deceased tenant and they would succeed to the tenancy as joint tenants.

13. Once it is found that the tenants were in occupation of the property in question as joint tenants and they had filed joint written statement, then upon the death of one of the joint tenants, the incidence of tenancy would pass on to the surviving joint tenant. The aforesaid legal position is too well settled and the same is echoed by the judgments of this Court in the case of **Smt. Daisy Mantosh** (supra) and **Sri Pratim Ghosh** (supra) as well as the judgment delivered by the Hon'ble Allahabad High Court in **Kamal Prasad** (supra) cited by Mr. Raut.

14. As regards Ms. Shaw's contention regarding applicability of Section 2(g) of the 1997 Act, the same does not hold merit since in cases of a joint tenancy there is unity of title, interest and possession and on the death of one of the joint tenants his interest is extinguished and the survivor continues as tenant. It is only on the death of the last surviving joint tenant (who would be seized of the whole interest) that the tenancy would devolve upon his heirs and it is then that the provisions of Section 2(g) of the 1997 Act may possibly apply. Such is not the case here.

15. For all the reasons aforesaid impugned order dated August 05, 2025 deserves interference and is accordingly stand set aside.
16. The name of the defendant no. 2 shall be expunged from the plaint. The learned Trial Court shall pass appropriate consequential orders for correction of records. The suit shall not be treated as abated. The learned Civil Judge (Senior Division), Sealdah is requested to dispose of Ejectment Suit No. 14 of 2015 as expeditiously as business of the learned court would permit without granting any unnecessary adjournment to either of the parties.
17. With the above observations, CO. 3277 of 2025 stands disposed of. There shall be no order as to costs.
18. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)