M/L. 7.
October 5, 2026.
MNS.

SA No. 109 of 2025
+
CAN 1 of 2026

Ram Ajor Shaw
Vs.
Kanai Das and others

Mr. Tarak Nath Halder, Adv.

… for the appellant.

1. The present appeal arises against a judgment of affirmance, whereby both the courts below decreed the eviction suit filed by the plaintiffs/respondents against the defendant/appellant on the ground that the defendant/appellant is a trespasser, after the demise of the original tenant, being an heir of the said tenant in occupation of the property.

2. Learned counsel appearing for the appellant argues that during pendency of the suit, the original tenant died and consequentially an application was filed by the plaintiffs/respondents under Order XXII Rule 9 of the Code of Civil Procedure, seeking substitution of all the heirs and legal representatives of the original tenant, apparently on the premise that all the said heirs had become tenants within the contemplation of the West Bengal Premises Tenancy Act, 1997 (in short “the 1997 Act”).

3. However, subsequently, the said application was dismissed for non-prosecution.

4. Learned counsel argues that in view of the admission made in the said application that all the heirs and legal representatives of the deceased original tenant had become tenants in respect of the suit property, both the courts below erred in law in decreeing the suit on the ground that the appellant had become a trespasser within the contemplation of Section 2(g) of the 1997 Act.

5. Secondly, it is argued that the appellant raised an objection as to the suit property being a thika tenancy property, thus bringing the eviction suit within the ambit of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (hereinafter referred to as “the Act of 2001”). However, the said objection was not dealt with properly by the courts below, which came to the erroneous conclusion that in view of the suit being one for eviction of a trespasser, the rigours of Section 8 of the Act of 2001 do not apply.

6. Thirdly, it is argued that the suit was all along filed for eviction of the appellant from one room. However, in their deposition, the plaintiffs/respondents admitted that the said room was partitioned into two rooms. Such description of the suit property does not tally with the real nature of the same, as admitted by the plaintiffs/respondents.

7. However, we are unable to convince ourselves that any of the above grounds raise a substantial question of law.

8. Insofar as the first ground is concerned, in view of the respondents having not proceeded with the application

under Order XXII Rule 9 of the Code of Civil Procedure, the plaintiffs/respondents cannot be bound by the principle of acquiescence/estoppel on any purported admission made in the said application.

9. In any event, the earlier suit, in which the application was filed, stood abated, upon which a fresh suit for eviction, on a continuing cause of action, was filed against the appellant as a trespasser.

10. Thus, mere filing of the earlier application in the previous suit cannot be said to operate as estoppel against the respondents insofar as the status of the appellant is concerned. Moreover, the status of the appellant is by operation of Section 2(g) of the 1997 Act, that is, by operation of law, against which no estoppel lies.

11. Insofar as the question of thika tenancy is concerned, we do not find any fault with the conclusion of the courts below to the effect that the suit, being one for eviction of a trespasser, did not come within the purview of Section 8 of the Act of 2001, which mandates eviction suits only against *bharatias* (tenants) to be filed before the Thika Controller.

12. Thirdly, the suit room, even taking into consideration the so-called admission of the respondents in their deposition that it had been partitioned, remained one, essentially the same in character from beginning till end.

13. It is immaterial whether there was an internal partition in the suit room, which essentially remained the same in character as described in the schedule of the plaint.

14. Thus, no question of law, let alone any substantial question, is involved on any of the grounds indicated above.

15. Accordingly, SA No. 109 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

16. Consequentially, CAN 1 of 2026 stands dismissed as well.

17. At this juncture, learned counsel for the appellant submits that the appellant be given some time to vacate the suit premises.

18. In this regard, the appellant will be at liberty to file an appropriate application before the executing court, if execution is / has been levied, upon which it will be open for the executing court to decide the same in accordance with law.

19. There will be no order as to costs.

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

(Sandip Kumar De, J.) (Sabyasachi Bhattacharyya, J.)