

Title Suit No.1119 of 2020
CNR No.WBCC01-003882-2020
Present: Ataur Rahman, Judge, Bench-IV
J.O. Code: WB00700

Order No.44
12.03.2026

The suit is posted for hearing of the application under Order 14 Rule 2 of the CPC dated 14.11.2025 filed by the defendants and other application under order 18 Rule 17 of the CPC dated 09.03.2023 filed by the plaintiffs.

Both sides filed their respective haziras.

Plaintiffs files written statements against the application under 14 Rule 2 of the CPC filed by the contesting defendant.

Heard the submission and objection from both sides.

It appears from the application under Order 14 Rule 2 read with section 151 of the CPC that the contesting defendant filed the instant application with a prayer for framing preliminary issue regarding the point of maintainability of the instant suit on the ground that the original tenant has expired and her sons have here no interest in suit premises but has been substituted. Moreover another Ejectment Suit vide no. 02 of 2009 between the same party is pending before the Ld. 6th Bench of Small Cause Court at Calcutta.

It is further contended that after the death of original tenant, his spouse has only scope to become a tenant under the landlord, herein the father of the present plaintiffs i.e, the husband of said Gouri Mitra namely Amal Mitra died long ago and as such upon the death of said Gouri Mitra, her sons, the present plaintiffs herein has no scope to step into the shoes in places of their deceased mother Gouri Mitra with an intention to become tenants under the defendants by way of declaration as it is purely bar under the provision of section 2(g) of the W.B.P.T Act 1997 and moreover, civil court has no power to declare any third person to become a tenant under the landlord as it is the jurisdiction of the Ld. Rent Controller to deal with and as such, as the plaintiffs have no scope to become a tenants under the defendants by way of declaration as seeking by their mother/original tenant Gouri Mitra since deceased, the instant suit is required to be heard by framing a preliminary issues regarding the point of maintainability of the instant suit by the present plaintiffs.

On the other hand, plaintiffs by filing objection submitted that the plaintiffs filed affidavit-in-chief and tendered documents which was marked as exhibits and PW.1 was cross examined.

Moreover, the plaintiffs filed an application under Order 18 Rule 17 of CPC for recalling to PW.1 to give some evidence for tendering some documents.

Heard both sides.

Perused the materials available on record and also gone through the provision mentioned by the contesting defendants. It appears to me that the original plaintiff has expired but before her expiry her examination-in-chief and cross examination has also been completed.

It is further apparent that the instant suit has been filed for declaration and restoration of khas possession in favour of the plaintiffs/tenant, whereas another suit is filed by the defendant as plaintiff for eviction vide Ejectment Suit no. 02/2019 which is pending before the 6th Bench of Small Causes Court at Calcutta.

Considering the entire facts and circumstances of this case. I think this suit is required to be disposed of on merit and if it is disposed on the basis of preliminary issue substantial justice may be defeated.

Accordingly, I am not inclined to allow the application filed by the contesting defendants.

Hence the application under Order 14 Rule 2 read with section 151 of CPC filed by the defendants on 14.11.2025 is considered and rejected

Fix **09.04.2026** for hearing of an application under Order 18 Rule 17 of CPC filed by the plaintiff, objection if any in the meantime.

D/C by me

Sd/-

**Judge, Bench-IV
City Civil Court, Calcutta**

Sd/-

**Judge, Bench-IV
City Civil Court, Calcutta**