

Ejectment Suit No.06 of 2022
Present: Jayashree Banerjee, Chief Judge
Order No.25 /dated 23.06.2025:

The record is taken up for passing order upon application filed by one Sri Ganga Prasad Jhawar, son of Late Kanhaiyalal Jhawar of P18, Kalakar Street, P.S Posta, Kolkata-700 007 under Order 1 Rule 10(2) seeking to be added as a party to the instant suit.

The plaintiff/landlord keenly contested the application and submitted Affidavit-in-opposition to the aforesaid application and in reply thereto the applicant also filed a rejoinder.

So far as the present suit is concerned the plaintiff herein claiming to be the landlord in respect of the tenanted premises by virtue of a deed of conveyance executed by and between the plaintiff and the erstwhile owner namely Smt. Puspa Devi Jhawar vide deed of Conveyance dated 25.01.2021 filed the instant eviction suit against the defendant tenant on the ground of default and reasonable requirement. The defendant tenant having entered appearance is contesting the suit.

The main contention of the Applicant Ganga Prasad Jhawar is that he is the owner of half share of premises no. P18, Kalakar Street, P.S Posta, Kolkata-700 007 in which the tenanted premises is situated and has been collecting 50% rent from the defendant/tenant and as such he is a necessary party to the instant suit and accordingly he may be added as a defendant in the instant suit. It is stated that there exists a landlord and tenant relationship between the defendant and the applicant and defendant continues to be a monthly tenant in respect of the suit property under him. In such circumstances, according to him, the question of proceeding to evict the defendant does not arise.

The plaintiff challenged such contentions made by the applicant by stating that the premises comprised in P-18, Kalakar Street, P.O. Burrabazar, P.S. Posta, Kolkata-17 was partitioned and thereby demarcated as Lot-A, Lot-B, Lot-C and Lot-D amongst the co sharers by partition dated 3rd April, 1959 and the plaintiff by virtue of the deed of conveyance purchased the properties comprised in Plot-A and Plot-B with proportionate rights in the common areas in Plot -D from the rightful owner of such partitioned property. According to the Plaintiff

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the tenanted premises falls in Lot -A of the property and as such the applicant cannot claim to be landlord in respect of the purchased property of the plaintiff.

The Ld Counsel appearing on behalf of the Applicant has taken me through the detailed averments made in the application filed by the applicant and accordingly submitted that by a registered Indenture dated 15.05.1942 Late Phusaram Jhawar and Late Kanhaiyalal Jhawar purchased the plot of land containing an area of 3 Cottahs 9 Chittaks at Premises no. P18, Kalakar Street, P.S Posta, Kolkata-700 007 and thereafter constructed a six storied building on the said plot of land. Subsequently Kanhaiyalal Jhawar died intestate on 14.07.1981, leaving behind his widow Late Gavaraja Devi Jhawar, one son, namely, Ganga Prasad Jhawar, the applicant herein and one daughter, namely, Late Shanti Devi Bagree as his only legal heirs. Late Gavaraja Devi Jhawar died intestate leaving her surviving only son i.e. the applicant and the daughter Shanti Devi. Thereafter Shanti Devi Bagree also died. During the lifetime of Late Kanhaiyalal Jhawar, he used to collect half share of rent from the tenants of the said premises and after his death the applicant and his sister Shanti Devi started collecting half share of the rent from the tenants and rest half share has been collected by heirs of Phusaram Jhawar. Phusaram Jhawar died intestate on 27.06.1951, leaving behind his widow Maghi Devi Jhawar and his son Mohan Lal Jhawar as his legal heirs. Maghi Devi Jhawar died intestate on 10.07.2012 leaving her sole surviving son Mohan Lal Jhawar as her only legal heir. Mohanlan Jhawar died on 24.06.2019, leaving behind his widow Pushpa Devi Jhawar as his only legal heir. It is submitted that a trust in the name of Phusaram Jhawar Trust was constituted by the heirs of Late Phusaram Jhawar and half share of the rent was being collected by the Trust from the tenants of the said premises. It is submitted that the plaintiff in the instant suit claims to be owner of the demarcated portion of the said premises on the basis of a Deed of Partition dated 03.04.1959 alleged to have been executed by and between Kanhaiyalal Jhawar and Maghi Devi Jhawar and Mohan Lal Jhawar but the alleged Deed of Partition between Late Kanhaiyalal Jhawar and the heirs of Late Phusaram jhawar was never given effect to or acted upon and accordingly the plaintiff cannot claim ownership of the divided portion of the said property on the basis of the alleged Deed of Partition. It is submitted that the defendant was inducted in respect of his shop room on the ground floor by the

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applicant and Seth Phusaram Jhawar Trust and since induction till date the applicant has been collecting half share of the rent from the defendant and said Pushpa Devi Jhawar till execution of the Deed of Conveyance in favour of the plaintiff was also collecting half share of rent as Trustee of Seth Phusaram Jhawar Trust. It is contended that as the applicant is the owner of half share of premises no. P18, Kalakar Street, P.S Posta, Kolkata-700 007 and has been collecting rent from defendant, he is a necessary party to the instant suit and as such the applicant may be added as defendant in the instant suit. In support of his argument the Ld Counsel placed his reliance on the following judgements:

- M/S India Umbrella Manufacturing Co. v. Bhagabandei Agarwalla (D) by LRs, 2004(3) SCC 1178;
- Mangal Builders & Enterprises Limited and Another V. William Magor & Company Ltd. And Another, 2017 SCC OnLine SC 2133;
- J.N. Real Estate V. Shailendra Pradhan, 2025 INSC 611

On the other hand, the Learned Counsel appearing for the plaintiff submitted that in an eviction suit it is the choice of the plaintiff to implead parties and no third party can dictate the plaintiff to make other applicants as parties to the Suit as the plaintiff himself is the dominus Litis and in case there is any defect of parties the plaintiff will suffer and the suit will fail. He submitted that the suit for eviction cannot be transformed into a Title Suit for determining the right, title and interest of the parties and accordingly, the application filed by the applicant cannot be entertained. It is submitted that the defendant is occupying a room on the south-western side of the ground floor of the premises no. P18, Kalakar Street, P.S Posta, Kolkata-700 007 which falls under Lot-A of the partitioned property which exclusively belongs to the plaintiff by virtue of the Deed of Conveyance dated 25.01.2021. It is submitted that the plaintiff has become the owner of Lot-A and Lot-B of the said Partition Deed along with the proportionate share in the common space in Lot-D of the said premises by virtue of the said Deed of Conveyance subject to the existing monthly tenants in occupation in the said premises. In support of his submission the learned counsel placed his reliance on the following judgement:

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- Kanaklata Das And Others V. Naba Kumar Das And Others, (2018) 2 SCC 352

I have heard the submissions made by the Ld. Counsels appearing for the respective sides in the light of the contentions made in the application as well as the objections submitted thereto. I have also considered the citations relied upon by the Ld. Counsels in support of their submissions.

It is an undisputed position that the plaintiff has filed the instant suit for eviction and recovery of khas possession, mesne profit and along with other consequential relief in respect of the suit premises which is one room on the ground floor of premises no. P18, Kalakar Street, P.S Posta, Kolkata-700 007 on the basis of a registered Deed of Conveyance dated 25.01.2021, by virtue of which the plaintiff purchased from vendor Smt. Puspa Devi Jhawar the divided half portion of land along with G+6 storied building marked as Lot-A and Lot-B of the partition Deed dated 03.04.1959 along with proportionate share in the common space in Lot-D. The applicant has not specifically denied the factum of partition by metes and bounds amongst the co-sharers of the premises in question by virtue of the partition deed dated 03.04.1959; what the applicant herein contends is that said partition has not been acted upon by the parties and accordingly the plaintiff cannot claim to be owner of the property by virtue of the deed of conveyance which is based on such partition. Clearly the disputes raised by the applicant has a bearing on the legality of the partition that had taken place in the year 1959 and the right, title and interest of the plaintiff flowing from such partition through the deed of conveyance. Such dispute cannot be adjudicated in an eviction suit filed against a tenant within the scope and ambit of the provisions contained in the west Bengal premises Tenancy Act, which deals with or regulates tenancy of premises primarily focusing on the rights of the landlords and tenants involving fixation of rent, eviction, protection of tenants from eviction and the procedure in connection thereof. In the present context the nature of dispute raised by the Applicant herein can only be decided in a Title Suit. The ratio of the decision laid down by Hon'ble Supreme Court in Kanaklata Das and Others vs Naba Kumar Das And Others, reported in (2018) 2 SCC 352 which is relied upon by the Ld Counsel appearing for the Plaintiff appears to be squarely applicable in this case. It was held therein that title of landlord in eviction suit is not relevant; if landlord fails to prove his

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title but proves his relationship of landlord and tenant and proves existence of any ground pleaded for eviction then his suit succeeds and on the other hand, if Landlord proves his title but fails to prove relationship of landlord and tenant, then his suit would fail. In the said judgement while dismissing the application under order 1 rule 10(2) CPC the Hon'ble Supreme Court was pleased to reiterate the settled principles of law in this regard and observed as follows:

“**11.** There are some well-settled principles of law on the question involved in this appeal, which need to be taken into consideration while deciding the question which arose in this appeal. These principles are mentioned infra:

11.1. First, in an eviction suit filed by the plaintiff (landlord) against the defendant (tenant) under the State Rent Act, the landlord and tenant are the only necessary parties. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.

11.2. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff landlord has sought defendant tenant's eviction under the Rent Act exists. When these two things are proved, the eviction suit succeeds.

11.3. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See *Ranbir Singh v. Asharfi Lal* [*Ranbir Singh v. Asharfi Lal*, (1995) 6 SCC 580] .)

11.4. Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he

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is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. (See *Ruma Chakraborty v. Sudha Rani Banerjee* [*Ruma Chakraborty v. Sudha Rani Banerjee*, (2005) 8 SCC 140] .)

11.5. Fifth, a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. (See *Udit Narain Singh Malpaharia v. Board of Revenue* [*Udit Narain Singh Malpaharia v. Board of Revenue*, AIR 1963 SC 786] .)

11.6. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, it is not necessary that all the owners/landlords should join in filing the eviction suit against the tenant. (See *Kasthuri Radhakrishnan v. M. Chinnian* [*Kasthuri Radhakrishnan v. M. Chinnian*, (2016) 3 SCC 296 : (2016) 2 SCC (Civ) 331] .)

12. Keeping in mind the aforementioned well-settled principles of law and on examining the legality of the impugned order, we find that the impugned order is not legally sustainable and hence deserves to be set aside.”

In view of the aforesaid settled principles of law reaffirmed by the Hon'ble Supreme Court and such decision being found to be squarely applicable in the present context with reference to the prayer made by the applicant seeking to be added as a party under order 1 rule 10(2) CPC, the application deserves to fail and liable to be rejected.

Now coming back to the judgements reported in 2004(3)SCC 178, 2017 SCC OnLine SC 2133, 2025 INSC 611 which are relied upon on behalf of the Applicant, it can be safely concluded in view of the discussion in

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the foregoing paragraphs and the following reasons that the ratio of such decisions are not applicable to support the prayer of the Applicant:

- (1) In M/S India Umbrella Manufacturing Co. v. Bhagabandei Agarwalla (D) by LRs, 2004(3) SCC 1178; The Hon'ble Supreme Court dealt with the right of one co-owner to file suit for eviction of a tenant in the property generally owned by the co-owners; It was held therein that one co-owner filing a suit for eviction against tenant does so on his own behalf in his own right and as an agent of the other Co-owners and the consent of other co-owners is assumed as taken unless it is shown that the other Co-owners were not agreeable. Now, in this case the Plaintiff has not filed the suit for eviction as a Co-owner of the premises, rather he filed the suit as an absolute owner of the tenanted premises by virtue of the deed of Conveyance. It is his specific case that the tenanted premises is part of the partitioned property purchased by him;
- (2) Mangal Builders & Enterprises Limited and Another V. William Magor & Company Ltd. And Another, 2017 SCC OnLine SC 2133 is also distinguishable as the law discussed therein relates to co-ownership of immovable property which has not been partitioned ; It was held that every co-owner has ownership of the entire property which in absence of any partition must be understood to extend to every inch of the property;
- (3) J.N. Real Estate V. Shailendra Pradhan, 2025 INSC 611 deals with the issue of impleadment of a necessary or property party in a suit for specific performance of contract; It was held therein that a person claiming title or interest in the suit property may be impleaded as a proper party as presence of such a party helps in effective adjudication without altering the nature of the suit. This case is clearly distinguishable in view of the decision of the Hon'ble Supreme Court rendered in Kanaklata Das & Ors. Vs Naba Kumar Das & Ors., (2018) 2 SCC 352 by the Hon'ble Supreme Court in case of suit for eviction.

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In the light of the aforesaid discussions, I do not find any merit in the application filed under Order 1 Rule 10(2) of C.P.C. by the applicant Shri Ganga Prasad Jhawar.

Hence, it is,

Ordered

the application filed by the applicant namely Ganga Prasad Jhawar under Order 1 Rule 10(2) of C.P.C. stands rejected.

There is no order as to costs.

Fix 23.07.2025 for hearing of the application under Section 7(3) of W.B.P.T. Act, 1997 and acceptance of written statement filed by the defendant.

Objection, if any, in the mean time.

Dictated & corrected by me:

Chief Judge

Chief Judge

City Civil Court, Calcutta.