

T Suit – 1423/22 CNR:WBCC01-006153-2022)

Present: Sri Jayanta Koley, Judge, Bench-II. (WB00562)

Order 12

05.08.23

The record is put up today for passing necessary order in terms of hearing conducted on the last occasion upon the application of the defendant dated 16.5.23 under Order 14 Rule 2 read with section 151 CPC praying for passing necessary order for framing of issue regarding the question of maintainability of the instant suit and to depose of the said suit on the basis of the said issue as a preliminary issue in terms of the provisions of Order 14 Rule 2 CPC on the ground that the plaintiffs have suppressed the fact that on their acquiring ownership in respect of the suit property by virtue of the two registered deeds of conveyance executed by the heirs and legal representatives of the original owner in favour of the plaintiffs and that the said 2 deeds of conveyance do not contain any averment to the effect of existence of any tenant in the suit property.

Though no written objection has been filed against the said application, but during the course of hearing vehement verbal objection has been raised on behalf of the plaintiffs.

It appears that the instant suit has been filed by the plaintiffs against the defendant for recovery of khas possession of the suit premises as described in schedule to the plaint together with damages and other consequential reliefs on the ground that the predecessor-in-interest of the defendant, namely, Ramesh Chandra Basak, was the recorded tenant in respect of the suit premises but after his death in the year 1997 followed by the death of his wife in the year 2003, the said tenancy in respect of the suit premise extinguished in view of the provisions of section 2(g) of the WBPT Act 1997 thereby rendering the status of the defendant in respect of the suit premises to be that of a wrongful occupier.

The defendant has been contesting the instant suit by filing a written statement denying all the material allegations contained therein, raising a plea that the plaintiffs have suppressed the fact of the mode and manner of their acquiring title to the suit property by virtue of two registered deeds of gift executed in their favour by the heirs and legal representatives of the original owner thereof.

Other than the ground as agitated by the defendant in their application under consideration, the Ld. Advocate for the defendant, during course of hearing, also raised another point in support of the defendant's prayer made in the said application to the effect that once the original tenant in respect of the suit premises, who happened to be the predecessor-in-interest of the defendant, having died prior to the promulgation of the WBPT Act 1997, the defendant has obviously become a tenant in respect of the suit premises by virtue of the provisions of the earlier WBPT Act 1956 and as such question of applicability of section 2(g) of the WBPT Act, 1997 does not arise against the defendant, he having automatically become a tenant in respect of the suit premises by virtue of inheritance according to the provisions of the said 1996 Act. In support of his contention, the Ld advocate for the defendant has also relied upon the principles of law laid down in the reported decisions of LAWS (SC) 2021 Vol 283 & 2013 1 CHN 336 apart from relying upon the judgements passed by the Hon'ble Apex court in its Civil Appellate jurisdiction at the time of disposal of Civil Appeal Nos 7020-7021 of 2005 (Shahwar Basheer and others VS Veena Mohan).

Before discussing the issues raised by the defendant through his application under consideration, it is necessary to go through the provisions of Order 14 Rule 2 CPC, which runs as follows :-

'R. 2. Court to pronounce judgement on all issues. - (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to -

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.'

So far as the grounds agitated by the defendant in his instant application is concerned, I find that admittedly the mode and manner of acquiring title to the suit property by the plaintiffs has not really been pleaded in the plaint; on the other hand, the defendant has actually described the manner in which the plaintiffs have acquired title to the suit property including the suit premises by referring to two registered deeds of gift executed in favour of the plaintiffs. Though it has been alleged by the defendant that the averments of either of the said 2 instruments do not contain anything about existence of any tenant in the suit property, but surprisingly enough no copy of such instrument has been furnished before this court for disposal for reasons best known to the defendant but unknown to this court. Whatever the case may be, the fact remains that merely because of non-mentioning of the factum of existence of any tenant in any portion of the suit property in the said two registered instruments does not ipso facto go to establish that the statement of the plaintiffs made in the plaint regarding the status of the defendant is out and out false or fabricated. Whatever the case may be, even if for the sake of argument if it is

taken to be granted that the averments of the defendants as made in the application under consideration really bears some merit, yet the said aspect cannot be adjudicated merely by way of perusal of the said documents until and unless the said documents or authenticated copies thereof are admitted into evidence for the purpose of deciding the status of the defendant in respect of the suit premises. In that perspective, the said ground as taken by the defendant does not at decide the question that this court has no jurisdiction to try this suit or that there is a bar to the instant suit created by any law for the time being in force. In such position it is obvious that the said ground as agitated by the defendant obviously involves issues of both law and fact and in my consideration neither the suit as a whole nor any part thereof can be disposed of on any issue to be framed according to the claim made by the defendant in this suit.

As regards the principles of law laid down in the reported decision of LAWS (SC)2021 2 83, I find that there the question was about the fact of existence or non-existence of the sale deed despite the executant having suffered civil death due to becoming Sadhvi after taking Jain diksha. But the question in the present instance is not at all similar to hold the issue in favour of the defendant. As such I do not feel that the said principles can come to the aid or assistance of the defendant in any manner.

Regarding the other ground agitated by the Ld. Advocate for the defendant during the course of hearing relying upon two case laws cited by him, I find that the Hon'ble Apex Court while delivering Judgements of Civil Appeal no 7020, 7021 of 2005 (Sharaha baseer and Vs Beena bagum) was pleased to hold that *the Karnataka Rent Act 1999, which came in to force with effect from 31.12.2001, did not affect the Respondent in any manner whose right had originally accrued to him upon the death of the original recorded tenant prior to promulgation of the said Rent Act of the State of Karnataka.* However upon careful scrutiny, it is evident that the provisions of section 5(1) of the said Karnataka Rent Act 1999 has explained the language 'inheritability of tenancy', which does not contain the terms as appearing in section 2(g) of the WBPT Act 1997 to the effect ' for a period not extending 5 years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later '. On the other hand, the Hon'ble High Court at Calcutta in the reported decision of 2018 (1) CHN (Cal) 396 has been pleased to lay down that *section 2(g) of the Act of 1997, which makes departure from section 2(h) of the predecessor statute, that will govern the definition of a tenant after the 1997 Act has come into effect. If a person claiming to be a tenant conforms to the definition of section 2(g) of the 1997 Act, he will be regarded as a tenant. Merely because the original tenant died prior to the 1997 Act coming into effect, it would not imply that some right under the 1956 Act vested in his heirs, which could not be undone. To ensure that all such heirs of the original tenant had the same time period to make alternative arrangements, the clause 'whichever is later' was introduced in section 2(g) of the 1997 Act so that the heirs of the original tenant, who had died prior to the 1997 Act coming into force, did not have a shorter time to make such alternative arrangements.* The Hon'ble Court has further been pleased to observe that *the 1956 Act provided for a degree of protection to certain classes of tenants in this State. In course of time, the legislative wisdom provided for a relaxation in the norms such that the protection was limited to a smaller class of persons and in certain*

specified situation by the Act of 1997. It cannot be said that merely because a tenancy had been created prior to the 1997 Act, the protection enjoyed under the 1956 Act would continue even after the 1997 Act. The 1997 Act does not admit of such a situation. The fact that he once enjoyed protection under a previous statute is no ground for him to urge that the successor statute would not apply to him or that he cannot be excluded from the purview of the protection accorded to him by the predecessor statute. Thus whether or not the original tenant died prior to the 1997 Act coming into operation, it makes little difference. These observations have been made by the Hon'ble Court upon taking into consideration the principles of law laid down by the Hon'ble Court in an earlier reported decision of 2013 (1) CHN (Cal) 336, and as such the said earlier decision does not come to the assistance of the defendants in the present suit.

In view of the above position, it is also obvious that the principles of law as laid down by the Hon'ble Apex Court in the context of the Karnataka Rent Act 1999, obviously differs from the position in the state of West Bengal when an occupier occupies a premises after the death of his predecessor-in-interest, who was the original recorded tenant thereof, and as such the case laws as cited by the Ld. Advocate for the defendant are not applicable to the facts and circumstances of this suit.

Totality of the aforesaid deliberations impells this court to arrive at definite conclusion that the grounds on which the defendant has prayed for deciding the question of maintainability of the suit as a preliminary issue in terms of Order 14 Rule 2 CPC does not bear any merit and as such the same is not entitled to succeed.

Hence, it is

Ordered

that the application of the defendant under Order 14 Rule 2 CPC dated 16.5.23 stands rejected on contest.

Fix 18.09.23 for further cross examination of PW 1.

D/C by me

Judge 2nd Bench

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