

**IN THE COURT OF THE CHIEF JUDGE,
CITY CIVIL COURT, CALCUTTA.**

Present : Sri Abhijit Som, Chief Judge (WB01127)

Title Appeal No.28 of 2025
(CNR No.WBCC01-007697-2025)

- 1. Smt. Radha Rani Banik,**
- 2. Sri Radhakanta Banik**
- 3. Sri Gour Banik**

..... Appellants/Defendants

-Vs-

Sri Pradip Kumar Bhattacherya

..... Respondent/Plaintiff

Date of delivery of Judgment : 30th day of June, 2026

This appeal having come on for final hearing on 12.05.2026 and 17.06.2026 in the presence of -

Deb Kumar Chandra

.....Ld. Advocate for the Appellants;

Arun Kumar Bardhan

.....Ld. Advocate for the Respondent.

and having stood for consideration on this day, the court delivers the following Judgment:-

Judgement

Aggrieved with the judgment and decree dated 29th March, 2025 passed by the Ld. Judge, Bench-II, Presidency Small Causes Court,

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Calcutta in Ejectment Suit No.785 of 2000, the instant appeal is filed.

The appeal is filed at the instance of the tenant who contested the suit as defendants. The respondent of the instant appeal being the plaintiff brought the suit for eviction and recovery of khas possession against the present appellants. The suit was decreed and accordingly the defendants (appellants herein) were directed to quit and vacate the suit premises. Having impugned the judgment and decree the appeal is filed.

The original plaintiff Sukesh Chandra Bhattacharya being the shebait and pujari of the deity Sri Sri Lord Saraswatiswar Shiba filed the suit against the three defendants. It is the case of the plaintiff that he was appointed as Shebait by the previous shebait Haramohan Bandopadhyay vide a registered deed dated 08.05.1995 and on the strength of the same the plaintiff became the sole Shebait of the deity situated at 5, Amherst Row, P.S. Amherst Street, Kolkata-700009. The previous Shebait Haramohan Bandopadhyay by a letter 09.05.1995 informed the tenant Sandhya Rani Banik about the change of shebaitship and asked to attorn her tenancy under the plaintiff. The defendants were the legal heirs of the original tenant Sandhya Rani Banik, since deceased. The plaintiff filed the suit for eviction as the tenanted property is required by him for the better performance of the Seva Puja and annual function of the deity. It is also alleged in the plaint that the tenant committed default in paying rent from June, 1995. It is claimed in the plaint that the plaintiff had no other alternative accommodation for the said purpose. The statutory notice under Section 13(6) of the WBPT Act, 1956 was issued requiring the defendants to quit and deliver the possession. Since, possession was not delivered in favour of the plaintiff, the suit was filed.

The defendants filed written statement denying and disputing the claims and allegations of the plaintiff. In paragraph no.11 of the written statement the defendants denied the plaintiff as their landlord. It is also denied that they were defaulters in payment of rent in respect of the suit premises. However, it is stated that they were ready and willing to pay rent of the suit premises to the person who was legally entitled to receive the same. It is also stated in the written statement that the requirement of the plaintiff is exaggerated and devoid of reasonableness.

During pendency of the suit the original plaintiff died. The son of the original plaintiff namely, Pradip Kumar Bhattacharya filed an application under Order XXII Rule 10 of the Code of Civil Procedure

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claiming that the interest of the suit property devolved upon him. The prayer was allowed by the Trial Court and accordingly, the applicant was allowed to act as the plaintiff.

Having considered the pleading of both sides, several issues were framed by the Ld. Trial Court. Both sides adduced witnesses. On consideration of the evidence Ld. Trial Court found that there was landlord and tenant relationship in between the parties to the suit. It was held that the defendants were defaulter in payment of rent since June, 1995. On the issue of requirement of the landlord, it was observed that the plaintiff was able to prove bonafide need.

One of the grounds of challenge in the appeal is that the Trial Court could not appreciate that there was no relation of landlord and tenant in between the plaintiff and the defendants. It was also challenged as a ground of appeal that the requirement sought for is beyond the intention of the original settlor of the Arpannama.

Points for Determination

Now this Court is to consider whether -

- (i) the relationship of landlord and tenant exists in between the plaintiff and the defendants giving rise to the plaintiff to file the suit for eviction and get a decree on satisfaction of the ground of the eviction;
- (ii) Whether the defendants have any right to dispute the ownership of the plaintiff and compel him to follow the terms of the original Deed of Trust (Arpannama) in the name of the deity.

Decision with Reason

During the course of hearing the plaintiff has filed the letter of attornment dated 09.05.1995 (Exbt.3) issued by the previous Shebait Haramohan Bandopadhyay to the tenant Sandhya Banik. Similarly, the original plaintiff Sukesh Chandra Bhattacharya issued another letter dated 10.05.1995 (Exbt.3/1) to Sandhya Banik requesting her to pay rent to him as per English calender month as he was appointed Shebait of the idol by Haramohan Bandopadhyay. The plaintiff also filed the money order coupon (Exbt.4) indicating the payment of rent for the month of May, 1995 amounting to Rs.40/- in favour of the original plaintiff Sukesh Chandra Bhattacharya by the original tenant Sandhya Banik. On careful reading of Exbt.4, it is found that the rent was paid in consequence of the letter of

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attornment dated 09.05.1995 and 10.05.1995 issued by the original Shebait Haramohan and subsequent Shebait Sukesh. It is already found in the original written statement that the defendants were ready and willing to pay rent to the person, legally entitled to receive the same in accordance with Arpannama. It is also noted that the defendants did not categorically deny the fact of payment of rent for the month of May, 1995 by way of money order in favour of the newly appointed shebait and original plaintiff of the suit namely Sukesh Chandra Bhattacharya. In cross-examination D.W.1 Radharani Das nee Banik (defendant no.1) admitted that her mother namely Sandhya Rani Banik was the original tenant of the suit premises. It is also admitted that the defendants did not pay rent since the month of June, 1995. Once it is found that the tenant in consequence of the letter of attornment paid rent by money order for the month of May, 1995 to the original plaintiff, then there is no scope of challenge as regards the landlordship of the plaintiff. So, it is not in dispute that the original plaintiff was not the person entitled to receive the rent. The Shebaitship devolved upon the original plaintiff on the strength of the Deed of Indenture of the year 1995 (Exbt.2). Being the Shebait of the deity property, the plaintiff was entitled to receive rent from the tenant of the deity property. Since, the tenant defaulted in payment of rent for years together, the plaintiff filed the Ejectment Suit after terminating the tenancy by a notice to quit.

At the initial stage of the suit the application under Section 17(2) of the WBPT Act, 1956 was disposed by the Ld. Trial Court directing the defendants to make payment of the arrear rent. No such payment was made in compliance with the order of the Court. Moreover, It is admitted by the defendant no.1 (D.W.1) in cross-examination that rent was not paid since June, 1995. Therefore, there is no chance of providing protection to the tenant from eviction, since the current as well as arrear rent was not deposited. It is not the case that the defendants or the original tenant deposited the rent before the Rent Controller in case of any dispute or uncertainty of landlord. It is the rule of evidence that the tenant during the continuance of the tenancy cannot be permitted to deny the title of the landlord at the inception of the tenancy. It is found that in consequence of the letter of attornment the original tenant paid rent by way of money order to the original plaintiff. The action on the part of the tenant clearly indicates the acceptance of the tenancy under the landlordship of the plaintiff Sukesh Chandra Bhattacharya. So, the tenant cannot at any

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subsequent stage repudiates the landlordship of the plaintiff. It is no doubt that the owner of the property is the deity. The plaintiff being the Shebait may act as landlord. It is not the intention of the legislation that the plaintiff is to be the absolute owner of the property and without being owner he cannot bring a suit for eviction on the ground of reasonable requirement.

While criticising the judgment the Ld. Advocate for the appellant stated that the eviction may not be sought for the purpose of use and occupation of the shebait, since the property belonged to the deity. The deity property may not be used for the personal use and occupation of the members of the shebait family. The attention of this Court is drawn to the recital of the Deed of Endowment (Exbt.1). Having drawn the attention to the said Deed, it is argued that the Shebait shall stay in one room only as per terms of the Deed made by the Settlor. So, the present Shebait shall not have any right to evict the tenant occupying almost three rooms. The action of the plaintiff is in violation of the intention of the original Deed of Endowment.

On the other hand the Ld. Advocate on behalf of the respondent having drawn the attention of this Court to the paragraph no.15 of the plaint argued that the suit property occupied by the defendants were required for additional accommodation in order to make better performance of Seva Puja and the annual function of the deity. In support of his submission he has referred the decision of the Hon'ble Supreme Court in **Sri Marthanda Varma and Another v. State of Kerala and Others (2021) 1 Supreme Court Cases 225**. It is held by the Hon'ble Apex Court that a Shebait is custodian of idol, its earthly spokesman and human ministrant, entitled to deal with temporal affairs and manage property of idol. The office of shebaitship is not a bare office but an office together with certain rights attached to it. The personal and beneficial interest of mahant in the endowment attached to an institution is manifested in his large powers of disposal and administration and his right to create derivative tenures in respect of endowed properties.

Considering the above, this Court is of the view that the plaintiff being the Shebait can bring a suit for eviction for reasonable requirement for the purpose of better performance of the Seva Puja of the deity and the tenant has no locus standi to deny the shebait in exercising his right as landlord. It is observed by the Ld. Trial Court that the landlord is the best

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judge for his requirement. The requirement for the use of Seva Puja and annual function of the deity may not be termed as fanciful and mala fide. It is also not found that the plaintiff has alternative accommodation.

At the initial stage it is already found that the defendants is not entitled to get any protection from eviction for non-compliance of the order passed by the Trial Court in connection with an application under Section 17(2) of the Act of 1956. Having a conjoint reading of Section 13 (1)(i) and Section 17 of the Act, the defendants may be considered as defaulter in both pre-suit and post-suit payment of rent. Since the ground of defaultership is established, there is no scope of denying the desire relief to the plaintiff. The impugned judgment does not warrant any interference by this court.

The service of notice and its validity are not challenged as a ground of appeal. Having gone through the exhibits relating to notice it may be stated that the notice to quit is legal and valid and the same is received by the defendants. Accordingly, the appeal fails miserably.

Hence, it is

ORDERED

that the instant appeal be and the same is hereby dismissed on contest.

The Judgement & Decree passed by the Ld. Judge, Bench – II, Presidency Small Causes Court, Calcutta is hereby affirmed with above observation.

No order as to costs.

Let a copy of this judgement along with the T.C.R be sent to the Ld. Trial Court for information and necessary action.

Dictated and corrected by me,

Sd/- (Abhijit Som)

Chief Judge,

Sd/- (Abhijit Som)

Chief Judge,
City Civil Court, Calcutta.
30.06.2026