

West Bengal Form No.3701

HIGH COURT FORM NO. J(2)

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District : Calcutta

In the 2nd Bench of City Civil Court at Calcutta

Present: Sonia Majumdar (WB01128)

Judge, Bench II

City Civil Court, Calcutta

Title Suit No. 1786 of 2023

(CNR: WBCC01-009318-2023)

Date of Judgment :

THIS MONDAY THE 11th DAY OF MAY, 2026

Sri Satya Prakash Dhar. Plaintiff

VS.

Smt. Reba Das. Defendant

(1) Give date or dates

12.03.26

in presence of

Sri Manabendra Saha Ray

Advocate(s) Plaintiff(s)

_____ for _____

Pleader(s) Petitioner(s)

Ms Mary Coari

Advocate(s) Defendant(s)

_____ for _____

Pleader(s) Opposite Party(s)

And having stood for consideration to this day the court delivered the following Judgment :-

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JUDGEMENT

1. This is a suit for recovery of khas possession, mesne profit and other consequential reliefs.

2. In a nutshell, the case of the plaintiff as pleaded in the plaint is that the plaintiff is the absolute owner of premises No.167/4/1, Bidhan Sarani, P.S. Burtolla, Kolkata – 700006. It is also the case of the plaintiff that one Naba Kumar Das was the recorded tenant under the plaintiff in respect of the entire first floor of the suit premises at a monthly rental of Rs.55/- payable according to English Calendar month. The plaintiff claims that Naba Kumar Das died bachelor before passing of the WBPT Act, 1997 and after his demise, the tenancy held by him, has been extinguished under the provisions of section 2 (g) of the WBPT Act, 1997 and that the defendant is in occupation in respect of the suit premises without having any manner of right. In spite of repeated request and demands made by the plaintiff, the defendant did not deliver peaceful vacant and khas possession of the suit premises and continuing to wrongful occupation therein. Therefore, finding no other alternative, the plaintiff through his Ld. Advocate sent a notice dated 25.03.2023 by registered post, asking her to quit, vacate and deliver up peaceful vacant and khas possession of the suit premises to the plaintiff within 15 days from the date of receipt of this notice and the said notice has been served upon the defendant. In spite of service of the said notice, the defendant did not quit, vacate and deliver up peaceful vacant and khas possession of the suit premises and continuing in wrongful occupation and thus, the status of the defendant in the suit premises is nothing but as of ‘trespasser’. Finding no other alternative, the plaintiff has brought this suit praying for

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passing a decree of recovery of khas possession of the suit premises upon evicting the defendant including her men, agents and associates therefrom.

3. The defendant has appeared and contested the suit by filing a Written Statement denying all the material allegations contained therein raising the plea that the suit is not maintainable. And that the plaintiff intentionally and deliberately has suppressed the material facts for taking unlawful gain by misleading this Ld. Court and that the plaintiff does not have any cause of action to bring this suit, which is barred by principal of estoppel. The specific defence of the defendant is that one Arati Ghosh was the absolute owner of the suit property and she entered into an agreement for sale with Naba Kumar Das, since deceased, the elder brother of the defendant and received a sum of Rs.2000/- and thereafter, 6000/- as an earnest money being the part consideration on 18.11.2017 and thereafter, signed the draft copy of Deed of Indenture and presented the same before the Urban Land Ceiling Department for obtaining permission to transfer the said property to the said purchaser Naba Kumar Das. Thereafter Naba Kumar Das died and after his demise it has come to the knowledge of the mother and sisters of Naba Kumar Das that said Arati Ghosh sold the the said property to Satya Prakash Dhar, the plaintiff in the instant suit by suppressing the said facts of agreement for sale.

The defendant has stated that mother of Naba Kumar Das namely, Aashalata Das and his all sisters including defendant filed a suit for Specific Performance of Contract before the this Court being Title Suit No. 1302 of 1983 and the same was dismissed on contest on 29.04.2006. Against the said judgement and decree they preferred an appeal being FAT No.2851 of 2008

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before the Hon'ble High Court, Calcutta, where it was ordered that until the said appeal is disposed of, the defendant has no right to proceed by claiming absolute owner over the suit property.

It is the case of the defendant that the father of the defendant namely, Sarat Chandra Das was all along recorded tenant under the erstwhile owner Artati Das in respect of the suit premises. After demise of Naba Kumar Das, his parents became the joint tenants in respect of the said tenancy and upon their demise, their daughter Smt Reba Das and three others namely, Namita Das, since deceased, Sulekha Chosh, since deceased, Smt. Kabita Mondal, Sabita Singh, since deceased and Anita Saha jointly inherited the said tenancy and the said landlord accepted them as monthly tenants in respect of the suit premises. Thereafter, the plaintiff determined the said tenancy by sending a notice dated 17.05.2006 and on non compliance of the said notice, the plaintiff filed an Ejectment suit being No.131 of 2010 against the said Reba Das and others before the Presidency Small Causes Court, Calcutta and the said ejectment suit was dismissed for non-prosecution on 09.02.2023. The defendant further stated that during pendency of the said ejectment suit, the said Namita Das, Smt. Sulekha Das, Smt. Sabita Das were died and upon their death, said Reba Das along with her another sister Anita Saha inherited the tenancy right and have become the joint monthly tenants in respect of the suit premises. Therefore, the defendant has submitted that the instant suit filed by the plaintiff is liable to be dismissed with heavy cost.

4. On the basis of the respective pleadings of the parties, the following issues have been framed in this suit.

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Issues

1. Is the suit maintainable in law & on fact ?
2. Has the plaintiff any cause of action to bring the suit ?
3. Is the suit barred by principles of estoppel, waiver and acquiescence ?
4. Was Naba Kumar Das the recorded monthly tenant in respect of the suit premises ?
5. Is the defendant a trespasser or a tenant in respect of the suit premises ?
6. Was the notice dated 25.03.2023 issued by the plaintiff's Advocate legal, valid and duly served upon the defendant ?
7. Is the plaintiff entitled to get the decree as prayed for ?
8. To what other relief/reliefs, if any, are the parties entitled ?

5. Evidence:-

a. In order to prove the case of the plaintiff, one Arijit Dhar, has examined himself as PW-1 and documents were also placed on record, which have been marked as Exbts.1 to 5/2 respectively on behalf of the plaintiff, which are as follows:-

1.	Letter of authority	Exbt. 1 (with objection)
2.	Property tax receipt of the entire premises No.167/5, Bidhan Sarani	Exbt. 2
3.	Letter of attornment dated 04.10.1979, issued by Arati Ghosh in favour of Naba Kumar Das	Exbt.3 (with objection)
4.	Postal receipt	Exbt. 3/1

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5.	A/D card	Exbt. 3/2
6.	A letter of Smt. Arati Ghosh addressed to the plaintiff	Exbt.4
7.	Copy of notice to quit dated 25.03.2023	Exbt.5 (with objection)
8.	Postal receipt and A/D card	Exbts. 5/1 & 5/2

b. As against the case of the plaintiff, one Reba Das, has examined herself as DW-1. On 01.10.2024, the defendant has filed three documents which were marked as Exbts. A to C respectively on behalf of the Defendant, which are as follows:-

1.	Certified copy of affidavit-in-chief in T.S. No. 1630/2009	Exbt. A
2.	Certified copy of entire order passed in Ejectment Suit No. 131/2010	Exbt. B
3.	Court deposit challan dated 06.03.2023	Exbt. C

DECISION WITH REASONS

6. Issue No. 1

This issue is not strongly pressed at the time of hearing argument. Moreover, it comes from the cause title of the plaint that the suit property is at

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167/4/1, Bidhan Sarani, P.S. Burtolla, Kolkata – 700006 i.e. very much within the jurisdiction within this court. Accordingly, there is nothing against the maintainability of this suit and this issue is answered in the affirmative in favour of the plaintiff.

7. Issue Nos. 2 to 8

All these issues are taken up together for the sake of convenience and being interlinked with one another.

Now, let me scan the evidence on record as submitted by both the parties, oral and documentary for proper adjudication of the case.

i. PW-1, Arijit Dhar, son of the plaintiff, duly authorized by him, has corroborated the plaint in his Evidence-in-chief on affidavit. In support of his plaint, he has filed several documents marked Exbts.1 to 5/2.

During cross-examination he has stated that he could not say the exact date, month and year of death of Naba Kumar Das. He has not furnished any counter foil of rent receipt in the name of Naba Kumar Das as it was not handed over to him. He has no knowledge about the appeal being FAT No.2851 of 2008 arising out of T.S. No.1302 of 1983. He could not say whether his father has in his possession any document in connection with T.S. No.1630 of 2009. He could not say whether the defendant of this suit and his elder sister were accepted as tenants in respect of the suit premises in T.S. No. 1630 of 2009. It might be a fact that the defendant in ejectment suit No.131 of 2010 had

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deposited arrear rent and current rent in Court on the basis of order passed in connection with his application u/s 7(1) and 7(2) of the WBPT Act. He has stated that it might be a fact that the said Ejectment Suit continued for 13-14 years before the same was withdrawn at the instance of his father. He was not personally acquainted with the sisters of the defendant. He could not say as to how many litigation were brought against the defendant and his sisters at the instance of the plaintiff. He has denied the suggestion brought to him by the defendant.

ii. The sole defendant Reba Das has deposed as DW-1 in this case and during evidence she corroborated the defence case in her Evidence-in-chief on affidavit. In support of her case, she has filed several documents marked Ext.A to C. She has prayed for dismissal of the instant suit.

During cross-examination, she has stated that Avishek Singh, the son of her sister, look after all the affairs of the suit and is aware about the same. She has admitted that actually the son of her sister resides in the suit premises. She has stated that her Aadhaar card and voter card contained the address of the suit premises. She has stated that Sarat Chandra Das was her father who was the original recorded tenant of the suit premises @ Rs.55/- per month. Her mother expired in the year 1992 while her father died in the year 1995. She has admitted that Naba Kumar Das, her brother used to reside in the suit premises and no rent receipt was ever issued in the name of Naba Kumar Das or in their name in respect of the suit premises. She has admitted that neither Naba Kumar Das nor she lodged any complaint before any authority including the Ld. Rent Controller regarding non issuance of rent receipt. She has admitted that the suit premises consist entire first of the building which is situated just opposite Scottish Church

College and Khudiram Basu College. She has denied suggestions put to her by the plaintiff.

iii. It is a suit of eviction under Section 2(g) of WBPT Act 1997. Now the provision of section 2(g) of the WBPT Act 1997 runs as follows :

“tenant” means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and [in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family, and were dependent on him or a person authorised by the tenant who is in possession of such premises] but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction:

Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises:

Provided further that the son, daughter, parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the

said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises [on condition of payment of fair rent]. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.

iv. In the present suit, the case of the plaintiff is that he is the absolute owner and landlord of the suit premises by way of purchase through the deed of sale dtd 08.10.2010 from the original owner Naresh Chandra Dutta. In support of his such claim the plaintiff has filed Exbt. 2 i.e. property tax receipt. He has also filed copy of letter of attornment marked as Exbt.3. He has filed copy of notice dated 25.03.2023 along with postal receipt and A/D card marked as Exbt.5, 5/1 and 5/2 respectively. He has instituted this suit against the defendant for eviction and recovery of khas possession u/s 2(g) of the WBPT Act, 1997.

Now, West Bengal Premises Tenancy Act, 1997 came into effect from 10.07.2001. In the decision referred to in 2024 (4) ICC (SC) 564, it is held by the Hon'ble Apex Court that the inheritance of tenancy will be guided by Succession Act if the tenant died before the enactment of WBPT Act, 1997. Therefore, in view of guidelines framed by the Hon'ble Supreme Court if death of any tenant occurred prior to 10.07.2001, then in that case tenancy will be guided by the West Bengal Premises Tenancy Act, 1956. Here in the present suit, the plaintiff himself has admitted in plaint that the original recorded tenant Naba Kumar Das died bachelor before passing of the WBPT Act, 1997 and hence, section 2(g) of 1997 is not applicable in this suit and the tenancy, after the

demise of Naba Kumar Das, will be guided by the Act of 1956 i.e. the law of inheritance.

Under such circumstances, all the issues are decided against the plaintiff.

v. Therefore, the totality of the findings and observations arrived at on the basis of the discussions and deliberations made herein above while considering the issues, it is obvious that the plaintiff has failed to bring home his case as pleaded in the plaint against the defendant and as such he is not entitled to the reliefs as claimed in this suit.

vi. In the result, the instant suit fails.

C. F. paid is correct and sufficient.

Hence, it is

ORDERED

that the Title Suit No. 1786 of 2023, be and the same is, hereby dismissed on contest against the defendant, however without any order as to costs.

A decree be drawn up accordingly.

D/C by me,

S/D

Sonia Majumdar

Judge 2nd Bench
City Civil Court, Calcutta

S/D

Sonia Majumdar

Judge 2nd Bench
City Civil Court, Calcutta

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