

ORDER NO.27 contd.

Heard ld. Advocate for the plaintiff.

Perused the petition and the materials on record.

On careful perusal of the case record, it appears that the defendant no.2, Jamuna Prasad, on 29.03.2025 filed an affidavit regarding the date of death of Defendant no.1 wherefrom it is clear that the defendant no.1 died on 14.02.2008 leaving behind his legal heirs and representatives as mentioned therein. It is also admitted that the rent was being paid in respect of the suit property by defendant no.2 alone on behalf of both defendants. Thus, the tenancy admittedly is a joint one and they are not tenants in common. Where the defendants are joint tenants, they constitute to be a single unit. The position of law has been clearly laid down in para 4 of a judgment passed by Hon'ble Apex Court in *H.C.Pandey v G. C. Paul* reported in (1989) 3 S.C.C. 77 (*Relied on*) wherein it has been held that *"It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negating or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable therefore. That is the position as between the landlord and the heirs of the deceased tenant.*

In other words, the heirs succeed to the tenancy as joint tenants. In the present case, it appears that the respondent acted on behalf of the tenants, that he paid rent on the behalf of all and he accepted notice also on behalf of all. In the circumstances, the notice served on the respondent was sufficient. It seems to us that the view taken in Ramesh Chand Bose is erroneous where the High Court lays down that the heirs of the deceased tenant succeed as tenants in common. In our opinion, the notice under Sec.106 of The Transfer of Property Act served by the appellant on the respondent is valid notice and therefore the suit must succeed".

Thus, in case of joint tenancy, the right of tenancy survives upon the other co-tenant. Where the defendant no.1 has died the tenancy right now survives against defendant no.2. In fact, even in the plaint, the defendants have been mentioned to be as joint tenants. The legal heirs of the deceased defendant do not inherit the right of tenancy to become tenants in common. Thus, the legal heirs of the deceased tenant are not necessary parties as the tenancy succeeds upon the remaining of the joint tenants. Moreover, I think that the plaintiff is the *dominus litis* and it is the prerogative of the

EJECTMENT SUIT NO. 82 OF 2022
C. N. R. NO. WBPS01-000122- 2022
Before Smt. A. Bhattacharya, Ld. Judge, 5th Bench.

ORDER NO.27 DATED 06.03.2026

Plaintiff files hazira.

No steps taken by the defendants.

Today is fixed for hearing of the petition under Sec.151 of C.P.C. filed by the plaintiff on 12.09.2025 and acceptance of written statement filed by defendant no.2.

Ld. Advocate for the plaintiffs is present.

None moves for the defendants on repeated calls. It is now 12.30 P.M.

The record is taken up for hearing of the petition under Sec.151 of C.P.C. dated 12.09.2025 filed by the plaintiff by filing which it is stated by the plaintiff that the instant suit has been filed against the defendants, inter alia, praying for a decree for eviction and recovery of vacant, khas and peaceful possession of the suit property. During pendency of the instant suit, defendant No.2 filed applications under Sec.7(1) and 7(2) of the W. B. P. T. Act wherefrom it was revealed that the defendant no.1 Bechu Ram has died without disclosing any date or proof thereof. The instant ejectment suit was filed on 02.03.2022 and the defendant no.2 filed his Vakalatnama on 01.04.2022 upon receiving summons and filed written statement on 25.01.2023. Defendant no.2, on 08.08.2024, also filed an application under Sec.151 of C.P.C. praying for acceptance of the written statement which is still pending. During course of hearing of the instant suit, Ld. Chief Judge of Small Causes Court, Calcutta, vide order no.20 dated 03.03.2025, called for clarification from the defendant no.2 regarding actual date of death of defendant no.1 as the defendant no.2 was citing a wrong date directing the defendant no.2 to file on affidavit informing the actual date of death of defendant no.1. Originally, the tenancy was created as joint tenancy in the names of the defendant nos. 1 and 2 and the plaintiff was never informed about the death of the defendant no.1 by defendant no.2 or any person claiming to be legal heirs or representatives of defendant no.1. The said tenancy was a joint tenancy and the tenants have equal share. The name of the defendant no.1, Bechu Ram is required to be expunged from the records of the instant suit.

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Plaintiff whom he will make a party to the suit filed by him. If at all plaintiff fails to prove the joint tenancy, then it is the plaintiffs' suit that will fail. It will not prejudice the interest of the defendant.

Hence, it is

ORDERED

that the petition dated 12.09.2025 filed by the plaintiff is allowed on contest.

Let the name of defendant no.1, Bechu Ram be expunged from the cause title of the plaint.

Note it accordingly in the relevant register.

Plaintiff is directed to file amended copy of plaint within 14 days from the date of this order after service of copy of the same upon the defendant.

Fix 21.03.2026..... for filing amended copy of plaint and hearing of the petition for acceptance of Written Statement filed by defendant no.2.

DICTATED AND CORRECTED BY ME,


JUDGE-IN-CHARGE


JUDGE-IN-CHARGE
[4TH BENCH]