

Ej. Suit No. 119 of 2022
CIS No. : WBPS01-000183-2022

Order No. 50
dated 07.03.2025

Today is fixed for passing order in respect of the petition filed by the defendant on 11.02.2025 filed under section 151 of the CPC.

I have already heard both sides.

Perused the materials on record.

Considered.

The contention of the defendant is that he had purchased one third share in the schedule property from the proforma defendant and thereafter he had stopped payment of rent. In the meantime, Triwave Infracorn Pvt Ltd filed a suit being no. T.S 133 of 2023 for declaration, cancellation and delivery of the instrument I.e .deed of conveyance, pending before the Ld. Judge, Bench XI, City Civil Court, Calcutta wherein an order of injunction has been granted restraining the defendant of this suit from alienating with the suit property and also proclaiming/projecting himself as the co owner of the suit property until disposal of the suit. The defendant submits that the question regarding the ownership is pending for adjudication before the Ld. Judge, Bench XI, City Civil Court, Calcutta in T.S 133 of 2023 which will have an important bearing in this suit hence the proceeding of the instant suit be stayed.

The Ld. Advocate for the plaintiff raised objection and submitted that the defence of the defendant has been struck off in terms of section 7(3) of the WBPT Act and this is another delatory tactics of the defendant. The attention of the court was invited to the previous order wherein the application of the defendant under order 7 Rule 11 of the CPC has also been rejected and no revision was also preferred against the said order.

The defendant by invoking the provisions of section 151 of the Civil Procedure Code has prayed for stay of the proceedings on the ground that the result of the T.S. 133 of 2023 will have an important bearing in this suit wherein the ownership of this defendant with regard to the suit premises/ building is in dispute. He has claimed to have purchased the share of a co owner of the suit premises/building and thereafter, as admitted by him, he stopped paying rent to the landlord. His purchase and the deed of conveyance is under challenge in the T.S.133 of 2023.

This is a suit for eviction and recovery of khas possession on the ground of default in payment of rent, reasonable requirements, sub letting, nuisance and change of mode of user. Whereas the relief claimed in the T.S.133 of 2023 is for declaration, cancellation and delivery of the instrument i.e. deed of conveyance. The T.S. 133 of 2023 is also filed by the plaintiff of this suit. The contention of the defendant is that he has purchased the share of a co owner in the suit premise/building and that makes him one of the co owners and not the tenant and so if his ownership is determined by Ld. Court in T.S. 133 of 2023 his status will be that of an owner and not a tenant and that is going to have an impact on this suit and as such until a finding to that effect is arrived by the Ld. Court, the proceedings of this suit be stayed.

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Assuming if the defendant/tenant is declared as the co owner in respect of the suit premises/ building, is that going to have an effect on this suit? On the acquisition of the rights of a co owner/landlord by the tenant, whether there will be an extinguishment of tenancy by merger? The settled position of law is that the lease or the tenancy does not get determined, by the tenant acquiring the rights of a co owner/landlord. A merger takes place and the lease gets determined, only if the entire reversion or the entire rights of the landlord are purchased by the tenant. The position of the purchaser/defendant as tenant continues if there is no complete merger or transfer of entire rights. In the instant case, there is no whisper of the entire rights being acquired by the defendant over the suit premise/building rather a share has been purchased, the validity or the legality is still under sub judice.

In view of the above, I do not find any merit in the application of the defendant dated 11.02.2025 filed under section 151 of the Civil Procedure Code.

Accordingly the same is rejected on contest.

Fixing **07.04.2025** for cross examination of PW1.

Dictated and corrected by me:

Judge

Smt. Glady Bomjan
(J.O. Code: 01039)
Judge, 3rd Bench
Presidency Small Cause Court,
Calcutta.