

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

Order No. 56
dated 22.05.2025

Today is fixed for cross examination of PW1.

Parties have filed their respective hajiras.

A vokatnama has been filed on behalf of the pro forma defendant.

Let the same be kept with the record.

An application under section 151 of the Civil Procedure Code has been filed by the pro forma defendant.

The plaintiff submitted that he does not intend to file any written objection rather shall make a verbal submission against the above application and insisted the petition be heard this day.

The application is taken up for hearing.

Heard. Perused the materials on record.

Considered.

The contention of the pro forma defendant is that he had sold his one third share in the schedule property to Moaz Ahmed, defendant herein and as such the defendant is the co owner thereof and as such the suit is not maintainable against the defendant.

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 dilatory tactics of the defendant through the pro forma defendant. The attention of the court was invited to the previous order wherein the application of the defendant raising the same issue under section 151 of the CPC had been rejected.

The pro forma defendant by invoking the provisions of section 151 of the Civil Procedure Code has submitted that the suit is not maintainable against the defendant as he is the co owner, i.e one third owner of the suit premises. This court vide order dated 07.03.2025 has rejected the similar application filed by the defendant claiming himself to be the co owner of the suit premises and that the suit against him is not maintainable. This court had rejected such application of the defendant. Today the only difference is that the instant application has been filed by the pro forma defendant. This court has already held in the said order that 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. The suit is very much maintainable against the defendant.

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In view of the above and the order dated 07.03.2025, the application of the pro forma defendant filed this day under section 151 of the Civil Procedure Code is rejected on contest.

Fixing **16.07.2025** for cross examination of PW1.

Dictated and corrected by me:

Judge

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