

ORDER NO.109 dt.16/11/22

Today is the date fixed for passing order as regards to the petition on behalf of the proforma defendant Smt Jayasree Kar under order 1 rule 10 (2) CPC. The defendant filed written objection.

It is contended by the petitioner that premises no.1/3 B Hem Kar Lane P.S Shyampukur had been absolutely belong to Kshetra Mohan Kar. Who died testate and before his death he made a Will which has been probated from the Hon'ble High Court in P.L.A No.172/2002 in which the property absolutely bequeathed to the present petitioner Jayasree Kar, impleaded in this suit as proforma defendant. By the said Will Sephali Kar the plaintiff on record had been give life interest. Jayasree Kar had been collecting rent in respect of the suit premises from the defendant 1, 2 and predecessor in interest of defendant 3 (a) and 3 (b) with the consent and authority of Sephali Kar and for which the present petitioner Jayasree Kar has been impleaded as proforma defendant in this suit. Jayasree Kar after the death of Sephali Kar as per the recital of the last Will of Khetra Mohan Kar this petitioner became the absolute owner of the suit property and prayed for transposition in the category of the plaintiff from the proforma defendant after the death of plaintiff Sephali Kar.

The defendant by filing written objection stated that the petition is misconceived and order 1 rule 10 is not applicable and just with the prayer of the petitioner. As per the provisions of law after the death of plaintiff and defendant a substitution is required to be made under the provision of order 22 rule 3 and 4 CPC and substitution only can be made if the right to sue survives as per the provisions of Order 22 rule 2 CPC. And it is further contended that Sephali Kar had life interest in the suit property and accordingly just after her death right sue does not survive. So the suit cannot be continued. In that

respect the Ld. Advocate for the defendants referred a rulings reported in (1996) 2 SCC 205.

It is not denied by the defendants that Jayasree Kar is the present petitioner was not collecting rent. It is also admitted in the application u/s 7 (2) of W.B.P.T. ACT that original plaintiff collected rent and issued rent receipt in favour of the defendants. So it is admitted fact that the defendants are tenant in respect of the suit premises under the original plaintiffs who had life interest in the suit property. It is settled law that tenant will always remain a tenant and as per provisions of West Bengal Premises Tenancy Act any person who is collecting or receiving rent whether on his own account or on account of other would be landlord.

In the rulings referred by the defendant the view of the Hon'ble Apex Court is that "Whenever a party to a suit dies, the first question which is to be decided is as to whether the right to sue survives or not. If the right is held to be a personal right which is extinguished with the death of person concerned and does not devolve on the legal representative or successor then it is an end of the suit. Such suit therefor cannot be continued."

Obviously the right of the plaintiff has been extinguished with her death as she was holding life interest but that application will not applied in this suit as this is a suit for eviction of a monthly tenant. It is to ascertained whether right to collect rent from the defendants continued or not. Then it will be held that right to sue survives. In this case it is contended by the original plaintiff that on her consent the proforma defendant was collecting rent from the present defendant and after her death with the strength of the probated Will executed by Khetro Mohan Kar, this petitioner has became the landlord / owner in respect of the suit premises against the defendants but that has to be established by adducing evidence by the petitioner. So the right sue survives against the defendant praying for eviction of monthly tenant.

Moreover if there are so many landlords and if any one landlord files suit against tenant with the consent of the co-landlords then on the death of the plaintiff any other co-landlords can continue the suit on the death of original plaintiff / co-landlord who filed the suit for eviction as each landlord has right to continue the suit.

It is contended by the defendant that order 1 rule 10 (2) CPC is not applicable in this case. It is not material what section or provision has been quoted in the application. It is to be seen only about the contents of the application.

So the prayer of the petitioner is hereby allowed. Let the petitioner / proforma defendant be transposed into the category of plaintiff (since deceased).

To 04/01/23 for filing amended copy of plaint and hearing of the defendant's petition u/s 151 CPC.

D/C by me

Judge, 4th Bench

Judge