

EJECTMENT SUIT NO. 6713 OF 2014  
C. N. R. NO. WBPS01-000639 - 2014  
Before Smt. A. Bhattacharya, Ld. Judge, 5<sup>th</sup> Bench.

ORDER NO. 72 DATED 28.03.2025

Both parties file hazira.

Written Objection is filed on behalf of defendant no.1 to the petition of the plaintiff for expunging the name of the defenant no.2.

Today is fixed for hearing of two petitions, one for hearing of the petition filed by the plaintiff for expunging the name of the defendant no.2 and another filed by the defendant for waiver of cost imposed vide order no.68 dated 05.11.2024.

Ld. Advocates for both sides are present.

The record is taken up for hearing of both the petitions.

By filing the petition, ld. Advocate for the plaintiff has submitted that defendant no.2 namely died on 30.09.2024 by intimation of defendant no.1 on 02.12.2024 and his name be expunged from the cause title of the plaint. It is further submitted by the ld. Advocate for the plaintiff that if one of the joint tenants dies, his legal heirs will not be substituted. In support of his contention, ld. Advocate for the plaintiff has relied upon the decisions reported in **AIR 1970 ALLAHABAD 389 (V 57 C 61) (LUCKNOW BENCH) and 1989(2) CLJ 351** and also **AIR 1978 CAL 332**.

On the contrary, it is submitted by the ld. Advocate for the defendant, by filing written objection today, that the application filed by the plaintiff is not maintainable and it is barred by principles of waiver, estoppel and/or principles analogous thereto. He has strong objection to expunge the name of the deceased defendant no.2 because unless and until the names of the legal heirs of defendant no.2 are brought on record, it will prejudice the interest of the defendants as the benefit accrued to them in course of cross examination of P.W.1 will be given a go bye.

Considered the petition, submissions of ld. Advocates for both sides and the materials on record. It is admitted by the D.W.1 in his examination in chief on affidavit that Aftab Ahmed and his brothers are joint tenants in respect of the suit premises. It is also admitted that the rent was being jointly paid in respect of the suit property. 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 negtiving 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.**

ORDER NO. 72 contd.

*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-tenants. Where the defendant no.2 has died the tenancy right now survives against defendant no.1. 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 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 07.01.2025 filed by the plaintiff is allowed on contest.

Let the name of defendant no.2, Mahatab Ahmed be expunged from the cause title of the plaint.

Note it accordingly in the relevant register.

Now, the record is taken up for hearing of the petition filed by the defendant.

It is submitted by the Id. Advocate for the defendant that a cost of Rs.30,000/- has been imposed by this Id. Court vide order no. 68 dated 05.11.2024 and prays for waiving the said cost as the defendant has financial stringency. If the cost of the defendant is not waived, it will be a burden for the defendant to bear with the same and as such, prays for necessary order for waiver of the cost.

Ld. Advocate for the plaintiff has strong objection and prays for rejecting the petition for waiver of cost.

Considering the petition, submissions of Id. Advocate for both sides and the materials on record, I find that a cost of Rs.30,000/- was imposed upon the defendant vide order no. 68 dated 05.11.2024 for non filing of examination in chief on affidavit in spite of giving several opportunities.

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Let the petition dated 07.01.2025 filed by the defendant be kept with the record and the same will be considered looking at the future conduct of the defendant.

Fix 14.05.2025 for evidence of D.W.

DICTATED AND CORRECTED BY ME,

JUDGE

JUDGE  
[5TH BENCH]