

EJECTMENT SUIT NO. 219 OF 2018
C. N. R. NO. WBPS01-000720-2018
Before Smt. Leena Sharma, Ld. Judge, 5th Bench.

ORDER NO.19 DATED 12.04.2021

Today is fixed for delivery of order.

Both parties have filed their respective haziras.

Ld. Advocates for both sides are present.

Heard ld. Advocates for both sides.

Perused the record.

On the last date i.e. on 19.03.2021, heard both sides on petition dated 17.07.2019 filed on behalf of the defendant under Or.14 R.2 read with Sec.151 of C.P.C. and W/O dated 27.02.2020 filed by the plaintiff. Now, the record is taken up for passing order regarding the said petition and W/O.

Ld. Advocate for the defendant, through the petition dated 17.07.2019, has submitted that the instant suit was filed by the plaintiff disclosing herself as landlady of undivided 50% share by virtue of Deed of Sale dated 18.06.1988 of the premises no.9A, Chaitan Sen Lane, P.S. Muchipara, Kolkata-700012. That the defendant are challenging the validity and legality of Deed of Sale dated 18.06.1988. That the present plaintiff has never issued letter of attornment to the defendant claiming as tenant or lessees under her. That there is no existence of any relationship between the parties as to the landlord and tenant. So, before going into trial, a preliminary issue is required to be framed regarding maintainability of the suit on the ground of existence of any relationship between the parties as such.

Mr. Radha Nath Nandy, one General Power of Attorney holder for the plaintiff as recognized agent and pleader under Or.3 R.1 & 2 of C.P.C., has raised strong objection to the instant prayer of the defendant and submitted that the plaintiff became the owner of half portion of the said premises by virtue of the Sale Deed which is legally enforceable. He has submitted that the instant petition of the defendant is liable to be rejected.

It is to be noted here that “ *an issue of law can be decided as a preliminary issue only where it is such that its decision does not necessitate investigation into the facts and it relates either to jurisdiction of Court or to the suit being barred under any prevailing law, and that, in the opinion of the court, the decision in issue will result in the decision in whole or a part of the suit.*”

It is to be noted that since the determination of issue of existence of relationship of landlord and tenant requires evidence, it cannot be dealt with as preliminary issue [AIR 1987 Kant 1]. Moreover, mixed question of fact and law cannot be decided as a preliminary issue [AIR 1964 SC 497], [AIR 1976 All 201].

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ORDER NO.19 contd.

Considering the submissions of both sides and submission of both parties, it appears that whether or not there exists any relationship between the parties as landlord and tenant requires determination of facts after leading evidence by parties, as such, the said fact cannot be determined by framing an issue under Or.14 R.2 of C.P.C.

Considering all, the petition dated 17.07.2019 filed by the defendant under Or.14 R.2 read with Sec.151 of C.P.C. is considered and rejected.

Thus, the petition is disposed of.

Fix 30.06.2021 for hearing petition dated 17.07.2019 filed by the plaintiff.

Dictated and corrected by me,

JUDGE

JUDGE
[5TH BENCH]
J.O. Code No. WB01006.