

Ej. Suit No. 146 of 2018
CNR No. WBPS01-000425-2018

Date: 04.07.2023

Order: 30

Today is fixed for hearing of the petition under order 1 Rule-10(2) of CPC r/w section 151 of CPC filed by the defendant dtd. 24.02.2020.

Both sides filed hazira through their Ld. Advocates.

The plaintiff has filed written objection against the application on 24.01.2023 before this Court.

Defendant also filed counter affidavit in connection with the petition under Order 1 Rule 10(2) r/w section 151 of the CPC filed by the defendant/petitioner today before this Court.

FACTUAL MATRIX:

This is a suit for eviction of tenant and recovery of khas possession under the WBPT Act. Plaintiff has claimed to be the landlord in respect of the suit property by way of purchase under registered Deeds of Conveyance dated 22.07.2011 and 03.08.2011. Plaintiff has alleged that the defendant was a monthly tenant under the vendors of the plaintiff in respect of the suit property. The plaintiff has brought the instant suit seeking eviction of the defendant on several grounds as enumerated u/s 6 of the WBPT Act, 1997.

Plaintiff has claimed to serve notice of eviction upon the defendants terminating the tenancy. Accordingly, the instant suit seeking eviction of the defendant.

The defendant, on the other hand, appeared in the present suit and filed written statement and applications u/s 7(1) & 7(2) of the WBPT Act, 1997 denying and disputing the case of the plaintiff wherein the defendant has specifically claimed himself to be a tenant in respect of the suit property. It has been stated by the contesting defendant in written statement that one Ratnamali Dasi was the owner of the suit premises who executed a Deed of Trust in the 1944 in favour of her cousin Mrinal Lal Mullick appointing him as the trustee and on death of said Mrinal Lal Mullick, his elder son Rabindranath Mullick became the trustee and thereafter he appointed himself and the other sons of Mrinal Lal Mullick as trustee on the basis of another trust deed dated 14.03.1960. It is further alleged that by another deed dated 24.04.1970 said Ratnamala Dasi appointed her elder son Balaram Mullick as one of the trustees and by another deed she appointed her younger son Lal Mohan Mullick as another trustee but on death of said Ratnamala Dasi, Lal Mohan Mullick declared himself as the sole

trustee and started collecting from the tenants most illegally for which a Title Suit being No. 167 of 1977 was filed before the Hon'ble Calcutta High Court and in the said suit an order was passed by the Hon'ble Court appointing one Ld. Advocate Mr. B.N. Bhattacharya as the receiver of the trust property viz., the suit property giving him the power to collect rent from the tenants.

Application on carpet:

In the above premises, the contesting defendant has specifically stated that the plaintiff had no authority to purchase the property in question which belongs to a trust and the appointed receiver namely Advocate Badrinarayan Bhattacharya who has been authorised by the Hon'ble Court to collect rent from the tenant is a necessary and property party in the present suit. Hence, application under Order-1, Rule-10(2) for adding the above named receiver as a proforma defendant in the present suit.

The defendant has filed the order of the Hon'ble Court passed in Suit No. 167 of 1977 along with the copy of the plaint, the copy of the Trust Deed dated 16.09.1944, copy of order of the Hon'ble Court dated 16.08.1978, 17.06.1997, 11.11.2019, copy of summon of Ej. Suit No. 144 of 2018, copy of plaint of Ej. Suit No. 144 of 2018, copy of rent receipt in support of of the petition under consideration.

The plaintiff has raised strong objection against the application under consideration by stating that the defendant has filed the petition only with intent to delay the present suit as the receiver is not at all necessary party in the present suit, moreso, when the Title Suit No. 163 of 1977 under which the said receiver was appointed has been dismissed for default by the Hon'ble Court. Accordingly, plaintiff has prayed for rejection.

The plaintiff has filed the copy of order of the Hon'ble Court dated 16.09.2022 passed in Suit No. 167 of 1977 and copy of order passed in C.O. No. 1286 of 2020, copy of order dated 26.09.2019 passed in Ej. Suit No. 145 of 2018, copy of order dated 12.06.2019 in Suit No. 163 of 1977.

Observation by the Court.

I have already heard both sides at length. Perused the materials on record.

Considered.

At the very outset, it is important to note that the instant suit has been filed by the plaintiff under the **provision of Section-6 of the WBPT Act, 1997** seeking eviction of the defendant as tenant alleging various grounds. The defendant has admitted his status to be of tenant in respect of the suit premises though he has denied the title as well as the

landlordship of the present plaintiff on the basis of his purchase of the suit premises as claimed by him.

Now the defendant has sought for an order of impleading the receiver namely Badrinarayan Bhattacharya appointed by the Hon'ble Court in Suit No. 163 of 1977 on the ground that said Badrinarayan Bhattacharya is a necessary party in the present suit.

Now, it is very important to mention here in this context that this suit since comes under the purview of WBPT Act, 1997, the question of title of the plaintiff/landlord has no role to play, rather the plaintiff has to substantiate that the defendant is a tenant under the plaintiff.

It is well settled that in a suit for eviction under the present Act the landlord and the tenant are the only necessary parties for the decision of the suit and it is for the landlord to prove that there exists the relationship of landlord and tenant between the plaintiff and the defendant and also the grounds of eviction as taken by the landlord and if the landlord fails to prove the same, naturally the suit will fail.

The plaintiff being the master of the suit has absolute prerogative to choose the person whom he desires to implead as a party for which the plaintiff is called the dominus – litis and he does so at his own peril/risk and one can not compel a plaintiff to choose the person whom he should make a party in his suit.

As already discussed above, the defendant has claimed to be a tenant in respect of the suit property and it is for the plaintiff to prove his landlordship in order to succeed in his case and the defendant can very well challenge the question of landlord and tenant relationship under the application u/s 7(2) of the WBPT Act, 1997 which can be decided in accordance with law after resorting to the mode of recording of evidence, if required, at all. But, under no circumstances the receiver named above can be said to be a necessary party in the present suit of a special nature, being one under the provision of Section 6 of WBPT Act wherein the question between two landlords or two tenants inter-se cannot be decided. Thus, the present suit being one for eviction of tenant under the provision of WBPT Act, 1997, the presence of only the landlord and the tenant is necessary. **(Reliance is placed on the decision reported in Kanaklata Das -vs- Naba Kumar Das reported in 2018 (2) ICC 495 SC).**

Moreover, it is also observed by this Court from the order dated 13.06.1997 passed by the Hon'ble Court in Suit No. 163 of 1977 wherein the above named receiver was appointed, that the said suit was dismissed and interim orders were vacated. It is also observed that the

Hon'ble Court further pleased to dismiss the above suit on its revival vide order dated 16.09.2022.

This being the position, this Court is of the view, that in the present suit the contradictory claim between the landlord and the receiver who allegedly have been authorised by the Hon'ble Court to collect rent pursuant to a suit referred above (which has already been dismissed) cannot be the matter of adjudication and it is to be only seen whether there exists landlord/tenant relationship between the parties and whether the landlord is entitled to get eviction of the tenant on the grounds mentioned by him in the plaint and nothing more. Needless to say, if the plaintiff fails to prove the above facts, the suit will not succeed but under no circumstances the question of contradictory claims between two landlords or two tenants or landlord and receiver can be decided or can be made subject matter of determination in the present suit for eviction.

Therefore, in my considered view that the receiver named Badrinarayan Bhattacharya is neither a necessary party nor a proper party in the present suit and the petition filed by defendant under Order-1, Rule-10 of CPC sans merit in it.

Hence, it is,

ORDERED

that the application under Order 1 rule 10 CPC filed by the defendant dated 24.02.2020 is rejected on contest, but without cost.

To **06-09-2023** for hearing of application u/s 7(2) of WBPT Act, 1997.

Parties are directed to file their respective documents with regard to application u/s 7(2) of WBPT Act, 1997.

Dictated and corrected by me:

Judge

**Smt. Sudipa Banerjee
J.O. Code : 01148
Judge, 3rd Bench,
Presidency Small Cause Court,
Calcutta.**