

EJECTMENT SUIT NO. 7021 OF 2014  
C. N. R. NO. WBPS01- 001430-2014  
Before Smt. Leena Sharma, Ld. Judge, 5<sup>th</sup> Bench.

ORDER NO. 52 DATED 03.08.2021

Today is fixed for order.

Plaintiff filed hazira.

No steps by the defendant.

On call, none moved for the defendant.

Ld. Advocate for the plaintiff is present.

Perused the record.

It appears from the record that the suit was filed on 23.12.2014 and on the very next date i.e. on 04.02.2015, the application under Sec.7(2) of the Act was filed. Thereafter, on 16.04.2015, W/S was filed by the defendant against the suit. Thereafter, on 13.01.2017, defendant filed the petition under Or.14 R.2(2) of C.P.C. It further appears that evidence was led by the parties and on 18.05.2016, evidence of the plainiff side was closed on prayer of ld. Advocate for the plaintiff in respect of application under Sec.7(2) of the Act. And the next date was fixed for argument. Thereaftrter, on 05.09.2018, one issue was framed by ld. Predecessor in Court in the manner that “Is there any relationship of landlord and tenant which exists/existed between the plaintiff and the defendant?”. It further appears that since after 05.09.2018, no steps was taken by the defendant and as such, on 31.05.2019, defendant was directed to show cause as to why his petition under Sec.7(2) of the Act shall not be disposed of after hearing the ld. Advocate for the Plaintiff exclusively. On 05.07.2019, defendant filed one show cause petition which was fixed for hearing. But thereafter, the defendant, in spite of strict direction of the Court, neither took any steps nor her ld. Advocate moved the matter and accordingly, the show cause petition was rejected by order dated 27.01.2021 as found not satisfactory and accordingly, hearing of application under Sec.7(2) of the Act was proceeded exclusiviely on plaintiff’s side. And, after completion of hearing, today is fixed for passing order regarding application under Sec.7(2) of the Act as well as on the issue of existence of relationship of landlord and tenant between the parties.

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Ld. Advocate for the plaintiff has submitted that by application under Sec.7(2) of the Act, defendant has prayed for determination of question of relationship as landlord and tenant between the parties which is not maintainable under the present provision of the Act. He has submitted that the defendant in another case has admitted his relation with the present landlord as landlord and tenant which is sufficient to consider him in the present suit as tenant under that landlord i.e. the plaintiff. He has submitted that the instant petition has been filed only to harass the plaintiff. He has submitted that the present defendant, in T.S. case No.906/2008, has admitted that she is a tenant in the suit premises of the present suit. He prayed for disposal of the petition under Sec.7(2) of the Act as well as to consider the issue of existence of landlord-tenant relationship between the parties in favour of the plaintiff. He has submitted that photocopies of some documents including T.S. case No.906/2008 was filed by the plaintiff on record for perusal.

Though none appeared for the defendant for hearing of instant show cause petition, considering the nature of the proceeding and materials on record as appended being noticed is found sufficient and accordingly, the matter was taken up for hearing for consideration and disposal on merit.

Considered.

It appears from the application under Sec.7(2) of the Act filed by the defendant that it is prayed for determination of the question of relationship as landlord and tenant between the parties.

It is to be noted here that determination of the issue of existence of relationship of landlord and tenant cannot be decided as a preliminary issue as only pure question of law to be decided as a preliminary issue. That C.P.C. confers no jurisdiction upon the Court to try a suit on mixed issue of law and fact as preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue. It is to be further noted here that there is an observation in order no.32 dated 05.09.2011 that the court can keep the issue open for its final adjudication at the time of

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final hearing/decision of the suit. Considering all, Court finds it proper to decide the issue finally along with other issues at the time of disposal of the suit only to avoid injustice in any manner.

It appears from the evidence on record that the defendant/D.W.1, during her cross examination dated 07.01.2015, has stated that she has no knowledge regarding the contents of her affidavit and that she has stated in her affidavit that her age is 70 years but actually she is aged about 85 years. This specific piece of evidence itself makes her affidavit very much doubtful to consider the matter of dispute.

From the above discussion of evidence on record, other materials on record and submission of Id. Advocate for plaintiff's side, the following conclusion may be arrived at e.g. defendant has admitted that she was a tenant in respect of the present suit premises and that the ownership of the plaintiff regarding the suit premises is not denied by the defendant and that there is no material brought on record by the defendant to show that she is not a tenant under the present plaintiff.

It is to be noted here that the finding on the relationship of landlord and tenant between the parties decided in a proceeding under Sec.7(2) of the Act is final only for the purpose of such application and not for the purpose of the suit. At this stage, the decision on the issue on the point under the present application is only tentative and prima facie in nature.

Considering all, the Court finds that prima facie, the defendant is a tenant under the plaintiff in respect of the suit premises.

Thus, the matter is disposed of.

Fix 10.11.2021 for framing of issues.

Dictated and corrected by me,

JUDGE

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