

EJECTMENT SUIT NO. 7021 OF 2014

C. N. R. NO. WBPS01- 001430-2014

Before Sri Sridhar Chandra Su, Ld. Judge, 5<sup>th</sup> Bench.

ORDER NO. 64 DATED 26.08.2022

Today is fixed for passing order of the petitions under Sec.151 of C.P.C. and under Or.7 R.11 of C.P.C.

Both parties have filed their respective haziras.

The record is taken up for passing order.

It is submitted by the ld. Advocate for the defendant, by submitting the petition under Or.7 R.11 read with Sec.151 of C.P.C. that the plaintiff filed this suit against the defendant on the ground of default and reasonable requirement. That one Md. Ibrahim was the owner of premises no.1, Aga Mehdi Street, P.S. Park Street, Kolkata-700016 after the death of Md. Ibrahim, his son Sk. Feku inherited the suit property and became the thika tenant. Said Feku married with Mariyam Bibi and one Hasina Bibi. That after said Sk. Feku died leaving behind his wives, son and daughters. That the defendant is one of the co-owners along with plaintiff and other co-owners being the wife of Sk. Raju, one of the sons of Sk. Feku. That the suit property is a thika property and there is no relationship of landlord and tenant between the plaintiff and the tenant and the plaintiff has filed this suit for wrongful gain and as such, prayed for rejection of the plaint. Along with the petition, petitioner has also filed some annexure.

By filing another petition under Sec.151 of C.P.C., ld. Advocate for the defendant has submitted that the defendant filed an application under Sec.7(2) of the West Bengal Premises Tenancy Act disputing the relationship between the plaintiff and the defendant. That the plaintiff filed this suit against the defendant on the ground of default and reasonable requirement. That one Md. Ibrahim was the owner of premises no.1, Aga Mehdi Street, P.S. Park Street, Kolkata-700016 after the death of Md. Ibrahim, his son Sk. Feku inherited the suit property and became the thika tenant. Said Feku married with Mariyam Bibi and one Hasina Bibi. That after said Sk. Feku died leaving behind his wives, son and daughters. That the defendant is one of the co-owners along with plaintiff and other co-owners being the wife of Sk. Raju, one of the sons of Sk. Feku. That the suit property is a thika property and there is no relationship of landlord and tenant between the plaintiff and the tenant and the plaintiff has filed this suit for wrongful gain and as such, prayed for recalling the order dated 03.08.2021 to allow the defendant to bring the actual facts before the ld. Court.

Ld. Advocate for the plaintiff, by filing written objections, has stated that the petitions are nothing but suppression of material facts based on false allegations. That

ORDER NO. 64 contd.

the defendant has no locus standi to file the instant petitions. That the defendant herself had alleged that she is a tenant under the plaintiff and is now debarred from taking a different stand by denying that she is not a tenant. Defendant filed one T.S. being no.906/2008 before the ld. City Civil Court, Calcutta claiming to be a tenant under the plaintiff and secured an ad interim order of injunction against the plaintiff. Defendant withdrew the said suit on her own violation after imposition of cost of Rs.1000/- by the Court and as such, the petitions are not maintainable.

Considering the submissions of ld. Advocates for both sides, the petitions, written objections and the materials on record, it appears from order no.52 dated 03.08.2021, that this Court held that the defendant is a tenant under the plaintiff in respect of the suit premises. That order is still in force. So, I find no merit in the instant petitions filed by the defendant.

Hence, it is Ordered that the petitions under Or.7 R.11 read with Sec.151 of C.P.C. and under Sec.151 of C.P.C. filed by the defendant on 08.03.2022 are hereby rejected on contest without any order as to cost.

Fix 31.10.2022 for hearing of the petition dated 18.08.2021 filed by the plaintiff.

Dictated and corrected by me,

JUDGE

JUDGE  
[5TH BENCH]  
J.O. Code No. WB-00-620.