

Ej Suit no. 112/2022
CNR no. WBSP09-000774-2022
J.O. Code: WB01422

Order no. 22 Dated – 05.10.2024:

Today is fixed for passing order with respect to the application under Order 7 Rule 11 of C.P.C. and filing W/O in the meantime.

Ld. Advocate for both the parties file their respective haziras.

The application dated 16.04.2024 U/O 7 R-11 of C.P.C. was heard on last occasion.

The record is now taken up for passing order.

Ld. Advocate for the defendant submits that the nature of the suit premises is that of a thika property and by suppressing the nature of the property, the plaintiff has filed the instant suit and as per provision of Sec. 8 (3) of the West Bengal Thika Tenancy (A & R) Act, 2001, it is enumerated that any dispute regarding payment of rent by a Bharatia to a Thika tenant shall be disposed of by the Controller. Further, according to Sec. 21 of the West Bengal Thika Tenancy (A & R) Act, 2001 any matter relating to a thika property shall be dealt by the Thika Controller exclusively. The plaintiff has also filed one Ejectment suit being no. 199/2004 against the defendant before this Court but subsequently, the said suit was dismissed. As such, the instant plaint is liable to be rejected as the suit property is a thika tenanted property.

Ld. Advocate for the plaintiff submits that the application U/O 7, R-11 of C.P.C. has been filed with a mala fide intention to prolong the litigation and states that the suit property is not a thika tenanted property. Further, Ld. Advocate for the plaintiff stated that the Court while considering the instant application cannot go beyond the plaint and its annexures and hence, the application is liable to be rejected.

Heard. Considered.

Perused the petition and materials on record.

On perusal, it is seen that the plaintiff has filed the instant suit for eviction of the defendant from the property being premises no. 7/1, Kulia Tangra 2nd Lane, P.S. Tangra, Kolkata – 700 050 and from the four corners of the plaint or the annexures filed by the plaintiff, it does not appear that the suit premises is a Thika tenanted property. Further, keeping in mind the provision of Sec. 21 as well as Sec. 8 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 it can be inferred that the questions arising of a person being a thika tenant or not are to be dealt but in the instant suit no such incident of thika tenancy or any other ancillary matters relating to it has been prayed by the plaintiff in the plaint. Moreover, while dealing with an application under Order 7 Rule 11 of the C.P.C., the Court can only look into the plaint and other annexures but no other documents filed at the time of hearing by the defendant can be relied upon. As such, the instant suit is well sustainable.

Hence, the application under Order 7 Rule 11 of the C.P.C. dated 16.04.2024 (I.A. 09/2024) is rejected on contest without any cost.

To 07.01.2025 for framing of issues.

D/C by me:

Sd/-

Civil Judge (Jr. Div.), Addl. Court,
Sealdah, South 24 Parganas

Civil Judge (Jr. Div.), Addl. Court,
Sealdah, South 24 Parganas