

Title Suit no. 500/2022
CNR:WBSP09-000814-2022
JO Code: WB01422

Order no. 7 Dated – 21.08.2023

Today is fixed for hearing of petition dated 22.02.2023.

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

The petition dated 22.02.2023 U/O VII, R-11 of CPC is taken up for hearing.

Ld. Advocate for the defendants submits that the plaintiff has filed this suit for eviction and recovery of possession as against the defendants with respect to the suit property. Ld. Advocate for the defendants has stated that the plaintiff has specifically stated in the plaint that the suit premises is a thika tenanted premises and the civil court has no jurisdiction to try this suit as per the provisions of Sec. 21 and 8(3) of the W.B. Thika Tenancy (Acquisition and Regulation) Act, 2001. So, the defendants have prayed for rejection of the plaint.

Ld. Advocate for the plaintiff submits that the instant suit has been filed for eviction of the defendants from the suit property who are trespassers in the eyes of law. Moreover, the instant suit is not governed under the provisions of W.B.P.T. Act, 1997. As such, he has prayed for rejection of the petition U/O VII, R-11 of CPC. Ld. Advocate for the plaintiff relied upon decision passed in *Md. Jamil Akhter V. Abdul Majid* reported in 2011 (1) CLJ Cal.

Heard. Considered.

Perused the petition and materials on record. On perusal, it is seen that the plaintiff has stated in his plaint that the plaintiff's father namely Gouhar @ Gowhar Hossain during his lifetime was a thika tenant in respect of the suit premises and after his demise on 07.07.1967, his son, being herein the plaintiff namely Sk. Jahar Hossain was recognised as a thika tenant. Thereafter, with the promulgation of the Calcutta Thika Tenancy Act, 1981 the said land was vested to the Government of West Bengal and the plaintiff became a direct Thika tenant and used to pay rent to the Thika Controller. The father of the defendants namely Sufi Mohammad Sadique was a monthly tenant under the plaintiff with respect of the suit premises and he used to pay his monthly rent to the plaintiff against rent receipt. It is true that while considering an application U/O VII, R-11 of CPC, the court will concern itself only with statements made in the plaint. However, in para 1 of the plaint, the plaintiff has stated that his father was a thika tenant in respect of the suit premises and the father of the defendants was a monthly tenant under the plaintiff with respect of the suit premises and he used to pay his monthly rent to the plaintiff against rent receipt. The suit was filed on 24.11.2022 when the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 was in force.

At this juncture, the relevant provision of Section 5 (3) of the W. B. Thika Tenancy (Acquisition and Regulation) Act, 2001 is set out:

“If any question arises as to whether a person is a thika tenant or not or whether the land in question is thika land or not, the Controller, either on his own motion or upon

contd.....

Title Suit no. 500/2022
CNR:WBSP09-000814-2022
JO Code: WB01422

Order no. 7 Dated – 21.08.2023 is continued.....

receiving any information, may, after giving the persons interested an opportunity of being heard and after examining all such documents and particulars as may be considered necessary, enquire upon or decide such question”

The provision of Sec. 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 which is also relevant herein, provides as follows:

“No civil court shall have jurisdiction to decide, or to deal with, any question, or to determine any matter, which, by or under this Act, is required to be, or has been, decided or dealt with, or which is to be, or has been, determined, by the Controller or the appellate or other authority specified in the provisions of this Act, and no order or judgment passed, or proceedings including execution proceedings commenced, under the provisions of this Act shall be called in question in any civil court.”

The decision relied upon by the plaintiff does not squarely apply to the facts of the instant suit as the said decision is in respect of a suit for eviction between the licensee and licensor but the instant suit pertains to a suit for eviction by a thika tenant against a bharatiya with respect to a thika land.

Now, to decide whether the plaintiff has right over the suit property, his thika tenancy right in respect of the suit property needs to be discussed and decided. So, on the conjoint reading of above mentioned two provisions, it is found that this court has no jurisdiction to decide this suit as it is barred by the provision of W. B. Thika Tenancy (Acquisition and Regulation) Act, 2001 and as such, the plaint is liable to be rejected as provided under Order VII, Rule 11 (d) of C.P.C.

Hence the petition dated 22.02.2023(I.A. 01/2023) is allowed on contest without costs.

Accordingly, the plaint stands rejected and the instant suit stands disposed of.

D/C by me:

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

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