

(2023) 12 CAL CK 0078
In the Calcutta High Court
Case No : C.O. No. 196 Of 2023

Kashi Nath Shaw & Ors.

APPELLANT

Vs

Hazi Abul Razzaque & Anr.

RESPONDENT

Date of Decision : 21-12-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 22 Rule 4(1), Order 1 Rule 10(2)
West Bengal Premises Tenancy Act, 1997 — Section 2(g)

Citation : (2023) 12 CAL CK 0078

Hon'ble Judges : Biswaroop Chowdhury, J

Bench : Single Bench

Advocate : Subir Banerjee, Md. Hossain, Gopal Chandra Gope, S. Chandra

Final Decision : Disposed Of

Judgement

Biswaroop Chowdhury, J

The petitioner before this Court is a tenant in a suit for eviction and is aggrieved by the order dated 02.12.2022 passed by Learned 5th Bench Small Causes Court, Calcutta in Ejectment Suit No.179 of 2007 rejecting application filed by the petitioner for addition of party.

The case of the petitioner before the Learned Court below may be summed up thus:-

1. The plaintiffs instituted the suit for eviction against the defendants.
2. The defendants No.1 and 2 {(1)Sri Kashi Nath Shaw and (2) Smt. Mira Show} appeared and contested the suit but during pendency of suit defendant No.2 died and defendant 2(a) to 2(c) were substituted.
3. On 18.10.2019 the defendant No.2(a) namely Amar Nath Shaw died leaving behind his wife (i) Sumita Devi Shaw (ii) Indra Gupta (iii) Rajeshree Shaw and (iv) Neha Shaw. All four legal heirs and successors were not included in the suit by virtue of order No.82 dated 06.03.2020.

4. It is now required that the following names be added as defendants in the suit namely;

- i) Sumita Devi Shaw wife of Late Amar Nath Shaw.
- ii) Indra Gupta daughter of Late Amar Nath Shaw.
- iii) Rajeshree Shaw daughter of Late Amar Nath Shaw.
- iv) Neha Shaw daughter of Late Amar Nath Shaw.

All of 92 Collin Street, P.S-Park Street, Kolkata-700016.

The plaintiff/opposite party filed objection to the petition under Order 1 Rule 10(2) of C.P.C.

By order dated 02.12.2022 Learned Trial Court was pleased to reject the petition under Order 1 Rule 10(2) C.P.C filed by the petitioner on contest.

The petitioner being aggrieved by the order dated 02.12.2022 passed by Learned Trial Court has come up with the present application.

It is the contention of the petitioners that the Learned Judge has erred in holding that the order of striking out the name of the said Amar Nath Shaw would prevent the petitioners from being added as defendants in the suit. It is further contended that the Learned Judge has erred in holding that the mere fact of not challenging the order of striking off the name of Amar Nath Shaw operates as estoppels on the petitioners from seeking addition in the suit as parties. It is also contended that the name of the said Amar Nath Shaw was struck off from the cause papers of the suit on the application of the opposite party No.1 and 2 without service of notice upon the petitioners.

Heard Learned Advocate for the petitioners and Learned Advocate for the opposite parties, perused the petition filed and materials on record.

Learned Advocate for the petitioners submits that the Learned Trial Judge has erred in rejecting the application for addition of parties filed by the petitioners. Learned Advocate further submits that the Learned Judge ought not to have rejected the application for addition of parties on the ground that the order by which name of Amar Nath Shaw was struck off was not challenged. Learned Advocate for the opposite parties submits that there is no error in the order passed by Learned Trial Judge. Learned Advocate further submits that it is not necessary to add the petitioners as parties, as the tenancy rights are defended well by the other defendants who are also heirs of original deceased tenant.

Learned Advocate for the opposite parties rely on the following judicial decisions:-

Santosh Kumar Mitra & Anr. vs. Smt. Snehalata Roy & Ors. reported in 2000 (2) CHN p-30.

Suresh Kumar Kohli vs. Rakesh Jain & Anr. Civil Appeal No.3996 of 2018 (Arising

out of Special Leave Petition (C) No.5489 of 2014).

Upon hearing the learned Advocates and considering the facts of the case first and foremost thing to be decided is the obligation of the plaintiff regarding making application before Court to bring on record the legal representatives of the deceased defendant and secondly whether the petitioners are necessary parties in the eviction suit instituted by the opposite parties according to Order 22 Rule 4 Sub-Rule-1 C.P.C. As per Order 22 Rule 4(1) of the Code of Civil Procedure where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone or a sole defendant or a sole surviving defendant or defendants dies and the right to sue survives the Court on an application made in that behalf shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

Thus from the provision contained in Order 22 Rule 4(1) of the Code of Civil Procedure it can be inferred that the plaintiff has a duty to ascertain the names of legal representatives of a deceased defendant and by application intimate the Court where the suit is pending and obtain an order of substitution. Where plaintiff fails to obtain name of any legal representative of deceased defendant and gets other legal representatives substituted in the suit the said legal representative cannot be made liable for laches of the plaintiff. The said legal representative left out from substitution in the suit has on obtaining such information right to make an application for addition of party. The court upon such application being made may if it is of the opinion that the said legal representative is a proper party may add the said legal representative.

Now the point for consideration is whether the petitioners are necessary parties.

In the case of Santosh Kumar Mitra & Anr. (supra) the Hon'ble Court observed as follows:

"9. From the discussions made hereinabove, it is pellucid that since the defendants who had contested the suit and filed this appeal have amply represented Smt. Anita Mitra and in view of the fact that the defendant No. 1, as noted hereinabove had paid rent for the suit premises to the landlord for and on behalf of all the joint tenants of the suit premises, in our view, the principles relating to doctrine of representation would be squarely applicable to the facts and circumstances of this case, and any action taken by the plaintiffs/respondents against the defendants would be deemed to be representing the other tenants. In the case of H.C.Pandey vs. G.C.Paul, AIR 1989 SC 1470, the Apex Court of our country also laid down the principle that when one of the joint tenants acted on behalf of the other joint tenants that he paid rent on behalf of all and he accepted the notice to quit, the notice served on the defendants in the suit premises must be found to be sufficient."

In the case Suresh Kumar Kohli (supra) the Hon'ble Supreme Court observed as follows:

"6. In the light of the above observations of the Supreme Court there can be no doubt that even if one of the legal heirs is not a party to proceedings for eviction filed by the landlord against the legal heirs of the original tenant, that heir who has been left out cannot later on come forward and agitate his or her right in the tenancy. In the present case, I find that Surayya Begum who claims to be living in the same disputed premises alongwith other legal heirs after the death of Khalil Raza has chosen to file her objections after the whole round of litigation is over and after the other legal heirs have lost right upto the Supreme Court. It is thus clear that these objections are filed only to defeat the decree and delay the execution of the decree. In my view, therefore, even if Surayya Begum was not a party to the previous litigation between the parties she has no right to object to the execution of the decree and the Additional Rent Controller ought to have dismissed the objections on that ground alone."

Upon considering the judicial decisions relied upon it is clear that the submission of the Learned Advocate for the opposite parties has some substance. However considering the fact that the suit is not at the verge of disposal and the evidence of defendant is yet to begin and application for issuing summons to witness/ Advocate Commissioner filed by plaintiff is pending disposal it would be just and reasonable to add the petitioners as parties to the suit. Moreover West Bengal Premises Tenancy Act, 1997 is a beneficial legislation and as Section 2(g) of the said Act defines the categories of persons who are tenants reasonable opportunity to appear and contest the suit should be given to those who are tenants as per Section 2(g) of the West Bengal Premises Tenancy Act, 1997.

Hence this Revisional Application stands allowed. Order No.102 dated 02.12.2022 passed by Learned Judge 5th Bench Small Causes Court, Calcutta in Ejectment Suit No.179 of 2007 is set aside.

The application for addition of parties filed by the petitioners stands allowed. The petitioners be added as defendants in Ejectment Suit No.179 of 2007 pending before Learned Judge 5th Bench in the Court of Small Causes at Calcutta.

It is hereby made clear that written statement in the suit if any to be filed by the Petitioners/Added Defendants shall be filed within three weeks of reopening of court after winter vacation and necessary amendment should also be carried out during this period of three weeks.

This revisional application stands disposed.