

(2014) 04 CAL CK 0120

Calcutta High Court

Case No: F.A. No. 49 of 1995

Rabindra Nath Mukherjee

APPELLANT

Vs

Tara Sundari Pyne

RESPONDENT

Date of Decision: April 11, 2014

Acts Referred:

- Calcutta Thika Tenancy Act, 1949 - Section 2(5), 3(8)
- Civil Procedure Code, 1908 (CPC) - Section 11
- Presidency Small Cause Courts Act, 1882 - Section 41

Citation: (2014) 2 CALLT 481 : (2014) 5 CHN 27

Hon'ble Judges: J. Bhattacharya, J; Arindam Sinha, J

Bench: Division Bench

Advocate: Animesh Kanti Ghosal and Chandramala Mukherjee, Advocate for the Appellant; Bratindra Narayan Ray, Priyanka Das, Arnab Saha, Alok Kumar Ghosh and Swapan Kumar Debnath, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Jyotirmay Bhattacharya, J.

This first appeal is directed against the judgment and decree dated 20th August, 1993 passed by the Learned Judge, City Civil Court, 10th Bench at Calcutta in title suit No. 284 of 1984 at the instance of the plaintiff/appellant. The plaintiff filed a suit for declaration of his Thika Tenancy Right in the suit premises. He also prayed for a declaration that the decree passed in the Small Causes Court suit being SCC No. 6138 of 1980 by the Learned 6th Judge Presidency Small Causes Court, Calcutta on 28th August, 1982 is not binding upon the plaintiff.

2. The plaintiff claimed that he and his brother namely, Sashi Bhusan Mukherjee, Proforma defendant No. 6 were joint thika tenants in respect of the premises No. 29/2, Jeliapara Lane, Calcutta 12 at a rental of Rs. 50/- per month including Municipal tax for the land payable according to English calendar month under the defendants

No. 1 to 4 till the enforcement of the Thika Tenancy (Amendment) Act, 1981. He also claimed that he along with the defendant No. 6 are the joint owners of the structure standing in the said premises. In the plaint, he traced out his Thika Tenancy Right partly through his grand mother and partly through the heirs of the other thika tenant viz; Gourimoni Dasi as her interest in the structure was purchased by his father Ram Chandra Mukherjee which ultimately devolved upon him and his brother upon the death of their father.

3. Let us now summarize the plaint case hereunder for proper appreciation of the dispute involved in the suit.

4. It is contended by the plaintiff that his grand mother Raimony Debya and Gourimoni Dasi were the owners of the structure standing on the suit premises No. 29/2, Jeliapara Lane, Calcutta 12 and they were joint thika tenants in respect of the said premises, having their separate possession in the respective portions of the structure standing thereon under the then Zamindar namely, late Keshab Lal Auddy and Nilmony Auddy, the grand father of the present defendants/landladies since the year 1903.

5. It was alleged that on the death of Raimony Debya and Gourimoni Dasi, their respective heirs, namely, late Ram Chandra Mukherjee, the father of the plaintiff and late Dwarika Nath Ghosh became the joint thika tenants of the suit premises under the above Zamindars. On the death of Dwarika Nath Ghosh his heir Bishnupada Ghosh became the thika tenant of the suit premises along with the plaintiffs father Ram Chandra Mukherjee and they became the joint thika tenants under the said Zamindars at the rental of Rs. 20/- per month.

6. The plaintiff further claimed that on the death of the Zamindar Keshub Lal Auddy in 1937, his son Bama Charan Auddy became the Zamindar of the suit holding jointly with Nilmony Auddy and the plaintiffs father viz; Ram Chandra Mukherjee along with Bishnu Pada Ghosh maintained their possession in the suit land with structure thereon as thika tenants under them.

7. It was also contended that on 7th September, 1934 the Zamindar Nilmony Auddy and Bama Charan Auddy both jointly sent a notice to the said thika tenant stating that the suit premises was allotted to Nilmony Auddy by virtue of a decree passed by the Hon^{ble} High Court, Calcutta in a partition suit amongst the co sharers of the Zamindars and thus, Nilmony Auddy became the owner of the said premises by virtue of the said decree passed by this Court in the said partition suit. The plaintiff thus, claimed that the plaintiffs father and Bishnu Pada Ghosh became joint thika tenants of the suit premises at a rental of Rs. 20/- per month payable according to the English calendar month under the said Zamindar Nilmony Auddy, the grand father of the contesting defendants, since the time of passing of the final decree in the said partition suit.

8. It was further stated by the plaintiff that on the death of Bishnu Pada Ghosh, his son Jugal Chandra Ghosh by a registered sale deed dated 10th January, 1946 sold the portion of the structure inherited by him from his predecessor-in-interest to the plaintiffs father and since then the plaintiff's father became the absolute owner of the whole of the structure standing on the suit premises and thus, he became the sole thika tenant under the Zamindar Raghu Nath Auddy, the father of the contesting defendants who inherited the said property from his father Nilmony Auddy upon his death, at a rental of Rs. 30/- per month payable according to the English calendar month.

9. It was alleged that the plaintiff's father died on 25th January, 1967 leaving him and proforma defendant No. 6 as his heirs. It was further stated therein that the plaintiffs father during his lifetime executed a will in respect of the suit premises No. 6 by creating life estate in favour of one Hari Moti Dasi, the widow of late Bhusan Chandra Das with a further direction for devolution of his residuary interest in the said thika tenancy in favour of the plaintiff and his brother, the defendant No. 6, on the death of Hari Moti Dasi and appointed her as executrix in the said will. The said will was duly probated on 12th March, 1975 and on the death of Hari Moti Dasi on 1st July, 1979 the plaintiff and the proforma defendant No. 6 became the absolute owners of the structure standing therein and they became joint thika tenants in respect of the suit premises under the contesting defendants who inherited the suit land from their mother Jogmaya Auddy who in turn inherited the same from her husband Raghunath Auddy on his death and thus the plaintiff and his brother proforma defendant No. 6 became the joint thika tenants of the suit premises under the present defendants.

10. It was further contended therein that the defendant No. 1 to 4 filed a suit being SCC suit No. 6138 of 1980 against the plaintiff and the proforma defendant No. 6 in the 6th Bench of Presidency Small Causes Court, Calcutta for recovery of the arrear rent due and payable by those tenants from December, 1977 to November, 1980 amounting to Rs. 1800/- and the defendants therein were described as premises tenant under them at a rental of Rs. 50/- per month payable according to English calendar month. A decree for recovery of the said sum of Rs. 1800/- was passed in the said suit in favour of the defendant No. 1 to 4 herein by overruling the plaintiffs claim for their Thika Tenancy Right in respect of the said premises.

11. Under these circumstances the plaintiff not only prayed for declaration of his Thika Tenancy Right jointly with his brother the proforma defendant No. 6 in respect of the said premises No. 29/2 Jeliapara Lane but also prayed for a further declaration that the decree passed in SCC suit No. 6138 of 1980 was not binding-upon them.

12. The defendant No. 1 to 4 contested the said suit by filing a written statement inter alia denying the plaintiff's Thika Tenancy Right in respect of the suit premises. They claimed that the decree passed in the SCC suit No. 6138 of 1980 was binding

upon the plaintiff and the proforma defendant No. 6. They further contended that the plaintiff and the proforma defendant No. 6 were the joint thika tenants under the defendants in respect of the suit premises and their tenancy was duly determined and terminated on expiry of 31st March, 1984 by due service of ejectment notice dated 8th February, 1984 through their Learned Advocate, L.N. Dutta as they sublet a part of their tenancy and defaulted in payment of rent since August, 1972. Despite receipt of the said notice, the plaintiff and the proforma defendant No. 6 failed to vacate the suit premises and they set up a plea of their Thika Tenancy Right in respect of the suit premises to defeat the defendants' claim for title in the said property which according to the plaintiff stood vested with the State on the date when the Calcutta Thika & Other Tenancies and Lands (Acquisition and Regulation) Act, 1981 (hereinafter referred to as the said Act of 1981) came into operation on 18.01.1982. The defendants thus, prayed for dismissal of the said suit.

13. Several issues were framed concerning the plaintiffs claim for Thika Tenancy Right in respect of the premises under defendants as well as on the binding effect of the decree passed in the SCC suit No. 6138 of 1980 on the plaintiffs claim for their Thika Tenancy Right in the suit premises.

14. The Parties have also adduced their evidence in respect of their respective claims.

15. The Learned Trial judge, after considering the pleadings of the respective parties and the evidence adduced by them, ultimately dismissed the plaintiff's suit by disbelieving the plaintiff's claim for thika tenancy in respect of the suit premises on the ground as elaborated in the judgment passed in the said suit. While dismissing the said suit the Learned Trial Judge held that the plaintiffs have failed to prove as to how their predecessor in interest acquired interest in the structure standing on the suit premises. The Learned Trial Judge also held that the plaintiff has also failed to establish as to who constructed such structure on the suit premises. The rent receipts which were relied upon by the plaintiff to support his Thika Tenancy Right in respect of the said premises were discarded by the Learned Trial Judge, as the Learned Trial Judge after meticulously considering both oral and documentary evidence in this regard, came to the positive finding that those rent receipts were all manufactured by the plaintiff subsequently, for the purpose of this litigation. The reason for non production of those rent receipts by the plaintiff in the earlier SCC Suit No. 6138 of 1980, was found to be unexplained by the plaintiff though they defended the said suit by raising their plea on Thika Tenancy Right therein. The alterations made in the rent receipts by way of deletion of the word "room" therefrom and insertion of the word "land" therein, were held to be very much suspicious as those alterations do not carry any initial of the person who allegedly made such alteration in the rent receipts. The assessment records produced by the Municipal Authority at the instance of the plaintiff were also discarded by the Learned Trial Judge, inasmuch as such old records were mostly worn out and/or

have been illegible. The Learned Trial Judge also found that existence of Kutcha structure on the suit premises could not be proved by the plaintiff. On the contrary, the Learned Trial Judge after analyzing the evidence and the documents on record, held that the constructions standing on the suit land are all pucca constructions which were mostly built up by brick walls with concrete foundation having its roof covered by partly tin shed and partly tile shed. Considering all the facts and circumstances of the instant case and by taking note of the nature of the construction standing in the suit premises, as well as the documentary evidence adduced by the defendants showing that the plaintiff accepted his Tenancy Right in respect of the premises and not of the land, the Learned Trial Judge ultimately dismissed the said suit in the said context. The instant First Appeal is directed against the said judgment and decree of the Learned Trial Judge.

16. Let us now consider as to how far the Learned Trial Judge was justified in passing the aforesaid decree in the facts of the instant case. Heard the Learned Advocates of the parties, considered the materials on record including the judgment and decree of the Learned Trial Judge which is impugned in this appeal.

17. Let us first of all consider as to how far the plaintiff succeeded in establishing his Thika Tenancy Right in respect of the suit premises under the defendant No. 1 to 4.

18. Since the ownership of the defendant No. 1 to 4 and/or their predecessor-in-interest in the said premises is not disputed, we do not feel it necessary to discuss the history of their title in respect of the suit premises. Similarly, induction of the plaintiff's grand mother along with one Gourimoni Dasi in the suit premises by the defendants' predecessor in interest, is not disputed by the defendants. As such we also do not feel any necessity to discuss as to how the Tenancy Right ultimately devolved upon the plaintiff and the defendant No. 6. Suffice it to mention here that the plaintiffs claim that his father Ram Chandra Mukherjee purchased the portion of the structure which was held by Jugal Chandra Ghosh being the successor of Gourimoni Dasi by a registered deed of sale dated 10th January, 1946, was proved by the plaintiff. Thus, we find that the title of the defendant No. 1 to 4 in the suit premises is not denied and disputed by the plaintiff and simultaneously the Tenancy Right of the plaintiff and defendant No. 6 in the said premises is also not denied and disputed by the defendants. What is disputed is the nature of the tenancy of the plaintiff and the defendant No. 6 in the said premises. The plaintiff claims that he and his brother the defendant No. 6 are the thika tenants in respect of the suit premises under the defendant No. 1 to 4 and they traced out their Thika Tenancy Right in respect of the said premises from their grand mother and the other co defendant namely Gourimoni Dasi since 1903 as according to the plaintiff the plaintiff's grandmother along with Gourimoni Dasi were thika tenants in respect of the said premises since 1903 and their Thika Tenancy Right ultimately devolved upon the plaintiff and the defendant No. 6 by way of successive succession.

19. On the contrary the defendant No. 1 to 4 claimed that the plaintiff and the defendant No. 6 are premises tenant under them in respect of the said premises and to support their such claim, they not only relied upon several rent receipts granted in favour of the predecessor in interest of the plaintiff and the defendant No. 6 but also the ejectment notice served upon the tenant by the lawyer of their predecessor in interest and the order of the Commissioner of Calcutta Municipal Corporation withdrawing the demolition proceeding. They also relied upon the decree passed in the SCC suit No. 6138 of 1980 wherein the plaintiff was found to be a premises tenant in respect of the said premises and the plaintiff's claim for his Thika Tenancy Right therein was overruled by the SCC Suit in its judgment passed in the SCC Court No. 6138 of 1980.

20. Since the plaintiff is trying to trace out his Thika Tenancy Right from his grand mother since 1903 we feel it beneficial to mention here that at that point of time, there was no legislation for regulating the terms and condition of thika tenancy between the thika tenant and his landlord. The Calcutta Thika Tenancy Act, 1949 which came into force on 28th February, 1949, was enacted for the first time to make better provision regulating the laws of landlord and tenant relationship in respect of thika tenancy in Calcutta. The plaintiff claims that his tenancy was regulated by the Calcutta Tenancy Act, 1949 and subsequently by virtue of the subsequent enactment namely, Calcutta Thika and Other Tenancies and Land (Acquisition and Regulation) Act, 1981, the landlord's interest in such thika tenancy land was vested with the State and thus they became direct tenant under the State since 18th January, 1982 when the Act of 1981 came into operation. In this context we feel it necessary to consider as to whether the plaintiff succeeded in proving that after the Act of 1949 came into operation, their predecessor in interest became thika tenant in respect of the said premises as per the Calcutta Thika Tenancy Act, 1949 or not. "Thika Tenant" was defined in section 2(5) of the said Act in the following manner: Section 2(5): "thika tenant" means any person who holds, whether under a written lease or otherwise, land under another person and is or but for a special contract would be liable to pay rent, at a monthly or any other periodical rate, for that land to that another person and has erected or acquired by purchase or gift any structure on such land for a residential, manufacturing or business purpose and includes the successor in interest of such person, but does not include a person-

- A. who holds such land under that another person in perpetuity; or

- B. who holds such land under that another person under a registered lease, in which the duration of the lease is expressly stated to be for a period of not less than 12 years; or

- C. who holds such land under that another person and uses or occupies such land as khattal.

21. Thus, if we analyze the definition of thika tenant we find that in order to be a thika tenant, the person claiming thika tenancy must prove that as on the date when such Act of 1949 was enforced, such person

i. was holding land under a written lease or otherwise, under another person, and is or but for a special contract would be liable to pay rent, at a monthly or any other periodical rate, for that land to that another person; and

ii. he has also erected or acquired by purchase or gift any structure on such land for residential, manufacturing or business purpose; or

iii. Such person inherited the right of thika tenancy from their predecessor by way of succession.

22. The said provision also contained an exclusion clause which provided that if such person who holds such land under that another person in perpetuity, he cannot be a thika tenant. Again if such person holds such land under another person by virtue of a registered lease which is valid for 12 years or more, then he cannot be a thika tenant. Then again if such person holds such land under another person and uses and occupies such land as khatal, he cannot be a thika tenant.

23. Keeping in mind the aforesaid provision of law, let us now consider as to how far the plaintiff succeeded in proving his Thika Tenancy Right in the suit premises. Before we scan the pleadings and the evidence of the respective parties in this regard, we feel it beneficial to mention here that the expression "structure" used in the definition clause of the said Act while defining Thika Tenant" u/s 2(5) thereof was considered by the Special Bench of this Hon"ble High Court in the case of [Lakshmimoni Das and Others Vs. State of West Bengal and Others](#), wherein it was held that in order to become a thika tenant such tenant must prove that he has raised kutcha or temporary structure on the land let out to him. It was specifically held therein that construction of pucca and/or permanent structure was not a condition sine qua non for establishing Thika Tenancy Right in the land let out to him. It necessarily follows that if any pucca construction is raised by a person other than a thika tenant on the land let out to him he will not become a thika tenant under the said Act.

24. Here is the case where we find that the plaintiff claims that his grandmother Raimony Debya and Gourimoni Dasi were owners of the structure stranding in the premises No. 29/2 Jeliapara Lane, Kolkata-12. But we find that he is totally silent in his evidence as to how they became the owner of the structure standing in the said premises. The plaintiff never claimed that the said structure was either constructed by his grand mother Raimony Debya or by the co tenant, namely, Gourimoni Dasi nor he stated in his evidence that those tenants became the owner of such structure by virtue of purchase or by way of gift from the erstwhile owner of the said structure. The plaintiff has also not proved in his evidence that the successor of his grand mother namely, Ram Chandra Mukherjee erected any structure on the suit

premises. He, however, produced one sale deed dated 10th January, 1946 to prove that he acquired ownership in a part of the construction raised therein by virtue of purchase of the same from the heirs of the other co tenant namely Jugal Chandra Ghosh through the said deed of sale. Though he claimed that his father Ram Chandra Mukherjee became the absolute owners of the said structure partly by inheritance and partly by purchase and he inherited the absolute interest in the said structure by way of succession along with his brother namely, defendant No. 6 after his father's death, but he has never stated either in his pleading or in evidence that the structure standing in the said premises was kutcha or temporary in nature. We thus, hold that since the plaintiff, has failed to establish that either his grand mother or his father raised any kutcha and/or temporary structure on the land let out to them, or they acquired interest in any kutcha structure standing thereon by way of purchase, gift or inheritance from the erstwhile owner thereof, it cannot be held that either his grand mother or his father was a thika tenant in respect of the said premises or he inherited any Thika Tenancy Right in respect of the said premises. On the contrary, in his evidence as P.W. 1, he stated that he resides at the said premises No. 29/2 Jeliapara Lane Kolkata-12, which is a pucca building. He further stated in his evidence that the rental of the premises is Rs. 50/- per month including Municipal taxes with the land underneath. His evidence that the rent of the said premises was Rs. 50/- per month including Municipal tax land underneath is also very significant in the facts of the instant case as he claimed that Rs. 50/- is the rental of the entire premises including land underneath and he never claimed that rent was payable by him for the land underneath only. If this part of the substantive evidence of the P.W. 1 is considered, coupled with the nature of construction which is a brick built house covered partly by tin shed and partly by tile shed with bath and privy which is in the nature of pucca construction, we hold that the plaintiff has miserably failed to prove that his grand mother and/or his father was a thika tenant in the said premises under the Act of 1949 and he along with his brother the defendant No. 6 inherited the thika tenancy in respect of the said premises from their father Ram Chandra Mukherjee. Such tenancy, in our view, is akin to the concept of premises tenancy in contradiction to the concept of thika tenancy.

25. Let us now scan the evidence of the defendant's witness, namely, D.W. 1. She stated in her evidence that the original structure which was standing on the said premises was demolished subsequently and their predecessor in interest constructed pucca building thereon and since such part of the evidence remains uncontroverted and no cross examination was made by the plaintiff, in this regard, we hold that whatever structure was originally standing on the said premises belonged to the predecessor in interest of the defendant; otherwise they could not have constructed a pucca building thereon after demolition of the kutcha construction which earlier existed therein. This part of unchallenged testimony of the defendant also proves that the predecessor of the plaintiff was a premises tenant under the predecessor in interest of the defendant No. 1 to 4 and, on the

death of Ram Chandra Mukherjee, the plaintiff along with his brother defendant No. 6 became joint premises tenants in respect of the suit premises under the defendant No. 1 to 4.

26. The rent receipts being Ext. 2 series which were produced by the plaintiff in the suit to establish their Thika Tenancy Right in respect of the said premises were rightly discarded by the Learned Trial Judge by holding that those rent receipts were manufactured by the plaintiffs for the purpose of this litigation. The genuineness of those rent receipts are very much suspicious as the deletion of word "room" and insertion of the word "land" in these rent receipts were not confirmed to have been made by the person who allegedly issued such rent receipts. Such alterations in the receipt does not carry even any initial of the person issuing such receipts. That apart the plaintiffs have also failed to explain the reason as to why those rent receipts could not be produced by him in the earlier SCC suit between the same parties even though they asserted their Thika Tenancy Right in the said premises in the said SCC suit.

27. Even some of the rent receipts produced by the plaintiff were issued in the name of a dead person. As such the Learned Trial Judge rightly discarded these receipts as those rent receipts were not issued by the Zamindar in the name of living tenant. The reason as to why these rent receipts were issued in the name of dead person remains unexplained from the side of the plaintiff. As such we also decline to rely upon those rent receipts as we doubt their genuineness. We also find no reason to rely upon the sale deed of 1946 being Ext. 4 as the said sale deed refers to a cow shed standing on the suit holding which in our view was incapable of its use for dwelling purpose and also for the reason that the very existence of such cow shed could not be proved by the plaintiff. In our view, the said sale deed cannot be otherwise regarded as a piece of evidence to support the plaintiff's claim of his thika tenancy right in the said premises. On the contrary the terms of letting the premises as printed on the reverse side of the rent receipts produced by the plaintiff clearly demonstrate that the predecessor of the plaintiff was a premises tenant in respect of the said premises as the conditions of letting of the premises mentioned therein are applicable to the letting of premises under the Tenancy Laws which are essentially different from the conditions of letting of land only.

28. In this regard, we feel it necessary to discuss the various provisions of the other two Acts viz., the Act of 1981 and the Act of 2001 to find out as to whether the tenancy held by the plaintiff in the said premises can be regarded as thika tenancy in the context of the relevant provisions of those two Acts. While making this exercise we find that the ingredients to be a thika tenant as contemplated u/s 3(8) of the said Act are not fulfilled in the instant case. "Thika Tenant" as defined in section 3(8) of the said Act remained almost identical with the definition of thika tenant u/s 2(5) of the said Act of 1949 excepting the exclusion part as mentioned in the Act of 1949. Under the Act of 1981, it was provided that if any person occupies any land of

another person whether under a written lease or otherwise under another person and is or but for a special contract would be liable to pay rent at a monthly or at any other periodical rate for that land to that another person and he has erected or acquired by purchase or gift any structure on such land for residential, manufacturing or business purpose he will be a thika tenant under the said Act. It was also provided therein that Thika Tenancy Right was a heritable right. The use of the expression "structure" in the definition clause while defining thika tenant in the said Act fell for consideration before the Special Bench of this Hon'ble Court in the case of [Lakshmimoni Das and Others Vs. State of West Bengal and Others](#), wherein it was held that such structure should be in nature of temporary structure i.e., kutcha structure which is different from pucca or permanent structure. It necessarily follows that if a tenant of a land erects pucca structure on the land let out to him, he will not be regarded as thika tenant under the said Act. Concept of raising pucca structure by a thika tenant for residential purpose with the permission of Thika Controller was introduced in the year 1969 by way of introducing section 10A of the Act of 1959. Thereafter in 1981 Act also, the thika tenants were permitted to raise pucca construction with the permission of the Municipal authority. To exercise such right of construction of pucca structure, tenant must first of all prove himself that he is a thika tenant in the said premises and it is only when he proves himself to be a thika tenant under this Act, he can be permitted to raise pucca construction in accordance with the provisions of the said Acts. Thus, proof of thika tenancy is sine qua non for exercising such right of pucca construction. In other words a tenant of land cannot be regarded as thika tenant under the Act of 1959 or under the Act of 1981 merely because of the fact that he raised pucca construction, on the land let out to him. This position remains unchanged even after the amendment of the definition of the thika tenant under the Act of 2001 in the year of 2010.

29. Since we have already held that the plaintiff has failed to establish that he and/or his predecessor in interest ever erected any kutcha structure or they acquired any interest in respect of any kutcha structure in the suit premises, neither his predecessor in interest nor he and/or his brother the respondent No. 6 can be regarded as thika tenant either under any of the said Acts. As such the landlord's interest in respect of the said premises cannot be vested with the State under the said Act of 1981 or under the Act of 2001.

30. Though we agree with the submission of Mr. Goswami, Learned Senior Counsel appearing for the plaintiff/appellant that the decision of Small Causes Court in the proceeding u/s 41 of the Presidency Small Causes Court Act would not conclude the issue on the question of title claimed by the plaintiff as a tenant and his subsequent suit filed on such a claim would not be barred by either u/s 11 of the CPC or under General Principle of Res Judicata, but we cannot be oblivious of that fact that by satisfying the said decree without protest or without reserving their right to challenge such finding of the SCC suit regarding their claim for thika tenancy in appropriate forum, their acceptance of such finding of the SCC suit can be

presumed.

31. Mere recording of the name of the plaintiff and/or predecessor as thika tenant in the assessment record of the Corporation does not itself establish that the plaintiff is a thika tenant in respect of the said land unless the ingredients for becoming a thika tenant as per the provision of 1949 Act or under the provision of 1981 Act or under the provision of 2001 Act are fulfilled by the plaintiff. Similarly, mere submission of the return under Form A by the plaintiff with the Thika Controller does not prove that he was accepted as a thika tenant by the Controller in respect of the said premises and the landlord's interest in the land vested with the State. Though the plaintiff claimed that his predecessor was the owner of the structure and he inherited the same through his predecessor by way of succession but he has failed to prove that either his predecessor-in-interest or he ever paid municipal rates and taxes in respect of the occupier's share in the said structure. On the contrary it is proved by the defendant in his evidence that the Municipal rates and taxes in respect of the entire premises including land and structure was paid by the predecessor in interest of the defendant No. 1 to 4. As such we do not find any justifiable reason to come to any conclusion different from the conclusion arrived at by the Learned Trial Judge while passing the impugned order. We, thus, find no merit in this appeal. The appeal stands dismissed on contest. The judgment passed by the Learned Trial Judge in the suit is hereby affirmed.

The urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

Arindam Sinha, J.

I agree