

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

G.A. No. 1 of 2023

In

C.S. No. 191 of 2022

Amalgamated Fuels Limited

Versus

Bharat Petroleum Corporation Limited & Anr.

Mr. Avinash Kankani
Mr. Sarosij Dasgupta
Mr. Sagnik Mukherjee
Ms. Shree Chatterjee
Mr. Suman Majumdar

... For the plaintiff.

Mr. Puspendu Chakraborty

... For the defendant no.1

Mr. Anirban Ray, Sr. Adv.
Ms. Anamika Pandey
Mr. Debraj Shaw

... For the defendant no. 2.

Hearing Concluded On : 12.09.2025

Judgment on : 25.09.2025

Krishna Rao, J.:

1. The defendant no.2 has filed an application being G.A. No. 1 of 2023 praying for rejection of plaint or in the alternative to dismiss the suit filed by the plaintiff being C.S. No. 191 of 2022.
2. The defendant no.2 has raised two issues in the present application i.e.
(i) The suit filed by the plaintiff arising out of 'commercial dispute' but the plaintiff has filed the suit in the Ordinary Original Civil Jurisdiction, and (ii) The suit is barred by law as the defendant no.1 is a thika tenant in respect of the suit property.
3. Mr. Anirban Ray, Learned Senior Advocate representing the defendant no.2 submits that the defendant no.2 is a partnership concern involved in the purchase and sale of petroleum products and motor oils, having its principal place of business in the suit property. The defendant no.2 has three partners and the latest deed of partnership was entered between the partners on 2nd April, 2019.
4. Mr. Ray submits that by way of a registered lease deed dated 5th December, 1952, one Burmah Shell Oil Storage and Distribution Company was granted lease in respect of the suit property. He submits that the lease agreement was for immovable property to use exclusively for trade and commerce. Mr. Ray submits that the defendant no.1 is a Government of India undertaking involved in the business of

petroleum. He submits that on 24th January, 1976, interest of the lease was acquired by the Central Government under the name Burman Shell Refinery Limited and now known as Bharat Petroleum Corporation Limited.

5. Mr. Ray submits that the dispute raised by the plaintiff in the present suit is commercial in nature and coming under the purview of Commercial Courts Act, 2015. In support of his submissions, he has relied upon the judgment in the case of ***T.E. Thomson & Company Limited Vs. Swarnalata Chopra Nee Kapur and Another*** reported in ***2025 SCC OnLine Cal 5076***.

6. The defendant no.1 is a thika tenant with respect to the suit property. The suit property comprises of a petrol pump which was constructed by the defendant no.1 in its capacity as thika tenant. He submits that the defendant no.1 as a thika tenant with respect to the suit property had filed a Writ Petition before this Court being W.P. No. 4052 of 1988 seeking leave to deposit its rent as thika tenant of the suit property before this Court. By an order dated 5th January, 1990, the Court has allowed the defendant no.1 to deposit rent with the Registrar, Original Side of this Court. In support of his submissions, he has relied upon the judgment in the case of ***Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman Vs. Ponniyamman Educational Trust*** reported in ***(2012) 8 SCC 706*** and submits that the plaintiff has pleaded the said fact in the plaint and

can be relied upon in an application under Order VII, Rule 11 of the Code of Civil Procedure, 1908.

- 7.** Mr. Ray submits that the suit property is a thika property as the officer-in-charge by a demand notice dated 14th October, 2011, demanded ground rent from the defendant no.1 and also intimated that in default action will be taken as per law. He further relied upon the notice dated 30th December, 2021, whereby the said officer-in-charge directed the defendant no.1 to appear before him with all relevant documents for verification.
- 8.** Mr. Ray submits that the defendant no.2 received an information under the Right to Information Act dated 23rd November, 2021 wherein the Controller had accepted the defendant no.1 as thika tenant with respect to the suit property.
- 9.** Mr. Ray relied upon Section 5(3) and Section 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 and submits that the Civil Court has no jurisdiction to decide, or to deal with, any question, or to determine the issue as to whether a person is a thika tenant or not and whether the land in question is thika land or not, which under the Act, only Controller has the jurisdiction to decide the same.
- 10.** Mr. Avinash Kankani, Learned Advocate representing the plaintiff submits that the defendant no. 2 has filed the present application only to delay the proceedings of the suit as the defendant no.1 has not filed

written statement. He submits that for deciding an application under Order VII, Rule 11 of the Code of Civil Procedure, 1908, the Court is only to consider the averments made in the plaint.

- 11.** Mr. Kankani submits that the defendant no.1 has not filed written statement and not claimed to be a thika tenant with respect to the suit property. The defendant no.2 who claims through the defendant no.1, has no locus or authority to claim the same on behalf of the defendant no.1. He submits that the plaintiff has nowhere admitted that the defendant no.1 is a thika tenant.
- 12.** Mr. Kankani submits that in paragraph 6 of the plaint, the plaintiff has categorically stated that the defendant no.1 wrongfully and illegally claimed to be a thika tenant in respect of the suit property but the defendant no.1 has not denied the said fact by filing written statement. He submits that the defendant no.1 has been depositing rent with the Registrar, Original Side of this Court, in terms of the order passed in the writ petition where the Court has clarified that the deposit of rent is without prejudice to the rights and contentions of the parties.
- 13.** Mr. Kankani submits that the plaintiff has filed the suit against the defendant no.1 for eviction. The defendant no.2 is running the business of petrol pump or using the premises for commercial purpose does not make the dispute commercial. He submits that to qualify the dispute as commercial dispute, the same must arise from an agreement but there

is no agreement between the plaintiff and the defendants, thus the dispute does not fall within the ambit of commercial dispute.

14. Mr. Kankani submits that the defendant no. 2 has relied upon additional documents in the present application but at the time of hearing of application under Order VII, Rule 11 of the Code of Civil Procedure, 1908, such documents cannot be looked into for any purpose.

15. The plaintiff has filed the suit against the defendants praying for the following reliefs:

“a) Decree for eviction and recovery of peaceful vacant and khas possession of the suit premises morefully described in Schedule X hereunder in respect of premises no.87, Park Street, Kolkata – 700016 against the defendants;

b) A decree for mesne profit for a sum of Rs.3,74,40,000/- morefully as pleaded in paragraph 10 hereinabove;

c) A decree for mesne profit till such time the defendants handover peaceful vacant khas possession of the property morefully described in Schedule X hereinunder;

d) Alternatively, adjudication of the mesne profit by appointing a Commissioner and a decree for such sum as may be found due and payable thereon by the defendants to the plaintiff;

e) Interim interest and interest upon judgment @18% per annum;

f) Injunction;

g) Attachment;

h) Receiver;

i) Costs;

j) Such further and other reliefs.”

- 16.** The case of the plaintiff is that the plaintiff has earlier filed a suit being Suit No. 103 of 1994 against one Nancie Craig and Others for specific performance of agreement for sale. The said suit was decreed on 14th January, 1997 and through the Special Officer appointed by this Court a deed of conveyance was executed in favour of the plaintiff on 19th February, 1998, with respect to the suit property. On 5th December, 1952, a lease deed was registered between David Jacob Cohen, Gerald Homes Neil Craig, Jacob Raphael Cohen and Seymour Ian Ralph Craig and Burmah Shell Oil Storage and Distributing Company of India Limited.
- 17.** On 24th January, 1976 by and under the Burmah Shell (Acquisition of its undertaking in India) Act, 1976 the interest of Burmah Shell Oil Storage and Distributing Company of India Limited was nationalized and acquired by the Central Government under the name Burmah Shell Refineries Limited which subsequently came to be known as Bharat Refineries Limited and thereafter as Bharat Petroleum Corporation Limited. The said company enjoyed the suit premises till the entire lease period and the same was expired by efflux of time but the defendant no.1 continued to remain in possession and occupation of the premises.
- 18.** The defendant no.2 has raised the issue that the defendant no.1 is a thika tenant in respect of the suit property. The present application is filed by the defendant no.2 and not the defendant no.1. The defendant no.1 has also not filed written statement by disclosing any defence that

the defendant no.1 is a thika tenant. The defendant no.2 has relied upon Section 5(3) and Section 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001, which reads as follows:

“5. Incidents of tenancies in respect of lands vested in the State. – [(3) 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 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 and decide such question.]

21. Bar to jurisdiction. – 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.”

- 19.** Section 5(3) of the Act provided that, if any, question arises as to whether the land in question is thika or not, the Controller, either on his own motion or upon receiving any information, he will decide the question after giving an opportunity of hearing. The defendant no.2 has relied upon paragraph 6 of the plaint wherein the plaintiff has stated that the defendant no.1 has filed a Writ Petition being W.P. No. 4052 of 1988, praying for and order to deposit rent before the Hon’ble Court and the Writ Court allowed to the defendant no.1 to deposit rent before the Registrar of the Original Side of this Court but without prejudice to

the rights and contentions of the party. The defendant no.2 has relied upon the documents issued by the Government of West Bengal to the defendant no.1 and the demand notice of payment of rent and the amount deposited by the defendant no.1 before the Registrar, Original Side of this Court.

20. Order VII, Rule 11 of the Code of Civil Procedure, 1908, reads as follows:

“ORDER VII

11. Rejection of plaint.— *The plaint shall be rejected in the following cases:—*

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate;]

[(f) where the plaintiff fails to comply with the provisions of Rule 9;]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is

satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

- 21.** The Court cannot consider the defendants’ documents while deciding an application under Order VII, Rule 11 of the Civil Procedure Code, 1908. The Court’s assessment is restricted to the averments made in the plaint itself and any documents filed with the plaint to determine if the plaint on its face, discloses a cause of action and is not barred by law. The defendants’ written statement or evidence is not relevant at this stage, as the Court only examines the plaint as a whole to see if any grounds for rejection are made out.
- 22.** Thika land was originally owned by Zamindars but was taken over by the Government after the “Zamindari System” was abolished. The Government became the owner of the land and those who stay there became the tenants. Thika Tenant means any person who occupies, whether under a written lease or otherwise, land under another person, and is or but for a special contract, would be, liable to pay.
- 23.** The plaintiff has disclosed two documents i.e. (i) the conveyance deed in favour of the plaintiff in terms of the decree passed by the Court and (ii) the lease deed of the defendant no. 1 which was expired by efflux of time. The defendant no. 2 has relied upon the statement made by the plaintiff in paragraph 6 of the plaint but admittedly the order passed in the writ jurisdiction is without prejudiced to the rights and contentions

of the parties, and the plaintiff made a specific averment that the defendant no.1 is in wrongful and illegal occupation of the suit property, thus the judgment relied by the defendant no.2 in the case of ***Church of Christ Charitable Trust & Educational Charitable Society (supra)*** is distinguishable from the facts and circumstance of the case. This Court did not find any merit as the submission of the defendants that the defendant no.1 is a thika tenant.

- 24.** The issue raised by the defendant no.2 that the suit filed by the plaintiff is commercial in nature but the plaintiff has filed the same in the Ordinary Original Civil Jurisdiction. It is the admitted case of the plaintiff that the defendant no.2 is running the business of petrol pump in the suit property. The plaintiff has not made out any case that either of the defendants was ever a tenant of the plaintiff. It is the specific case of the plaintiff that the defendants are in illegal occupation of the property in question due to efflux of time. The said lease deed was not with the plaintiff. The plaintiff is claiming its right over the property by way of decree of the Court. The plaintiff is not identifying the defendants as its tenants or any relation with the plaintiff. The case of the plaintiff is that the defendants are in illegal occupation of the suit property.

- 25.** Section 2(1)(c)(i) of the Commercial Courts Act reads as follows:

“2.(1) *In this Act, unless the context otherwise requires,-*

(c) “commercial dispute” means a dispute arising out of—

(i) *ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;.”*

26. On plain reading of the case made out by the plaintiff, this Court does not find any ordinary transaction between the plaintiff and the defendants as merchants, bankers, financiers and traders or there is any mercantile document between the plaintiff and the defendants. The defendant no.2 is running the business of petrol pump in the suit property does not or cannot say that the dispute between the plaintiff and the defendants are commercial in nature. The plaintiff has filed the case against the defendants for their eviction treating them as illegal occupants of the suit property. The plaintiff has not made out any case with regard to any relation of the plaintiff with the defendants. The judgment relied by the defendant no. 2 in the case of ***T.E. Thomson & Company Limited (supra)*** is not applicable in the present facts and circumstances of the case.

27. Considering the above, **G.A. No. 1 of 2023** is thus **dismissed**.

(Krishna Rao, J.)