IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

Present

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Aryak Dutt

APD No. 14 of 2025
with
IA/GA No. 1 of 2024
Arising out of

CS No. 279 of 2002
Smt. Anindita Chowdhury & Ors.

Vs.

Gouri Shankar Pal & Ors.

For the Appellants	:	Mr. Surojit Nath Mitra, Ld. Advocate General. Mr. Purnendu Das, Adv. Ms. Gitika Mallick, Adv.
For the Respondent No.11	:	Mr. Debdut Mukherjee, Adv. Mr. Gaurab Kumar Das, Adv. Mr. Amit Meheria, Adv. Mr. S.P. Bramhacharik, Adv.

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Hearing Concluded On : 09.09.2026

Judgment Delivered On : 16.09.2026

Aryak Dutt, J.:

1. The appellants, as plaintiffs, have assailed the judgment and decree dated 27th February, 2024, passed by the learned Single Judge in C.S. No. 279 of 2002 *(Smt. Anindita Chowdhury & Ors. v. Gouri Shankar Pal & Ors.)*, whereby the suit was dismissed.

2. The suit was one for recovery of khas possession of the suit property, being premises no. 124A, Acharya Jagadish Chandra Bose Road, Kolkata, together with a decree for Rs. 1,34,16,000/- on account of wrongful occupation of the suit property till 24th June, 2002, alternatively an enquiry into mesne profits, and other reliefs.

3. The predecessor-in-interest of the appellants demised the suit property to the original defendant by a registered deed of lease dated 17th May, 1946, for a term of thirty years, the intention being that the demised land would be utilised for the purpose of a motion picture theatre. By a subsequent registered instrument an option of renewal was introduced.

4. The original term expired on 17th May, 1976. By a letter dated 7th June, 1976 (Exhibit-F) the parties agreed to renew the lease together with the building and structures standing on the demised land for a further period of seventeen years, ten years from 17th November, 1976 and seven years thereafter ending on 14th April, 1993, at a rent of Rs. 1,475/- per month, it being contemplated that a formal deed of lease would be executed later. No such registered deed of lease was ever executed. Rent was last accepted for the month of March, 1993. The original defendant not having made over possession, the suit was instituted in the year 2002.

5. Upon the pleadings of the parties, the following nine issues were framed by the learned Single Judge:-

i. *Whether the suit is maintainable?*

ii. *Whether the suit discloses any cause of action?*

iii. *Whether the suit is bad for non-joinder or misjoinder of parties?*

iv. *Whether the suit property is vested with the State under provisions of the Calcutta Thika Tenancy (Acquisition & Regulation) Act, 1981?*

v. *Whether the tenancy of the Defendant and the Plaintiff is governed by West Bengal Premises Tenancy Act or Transfer of Property Act?*

vi. *Whether the suit is filed praying or partial eviction? If so, is the Plaintiff, in view of that, entitled to the any relief prayed for?*

vii. *Whether the Plaintiff is entitled to decree of eviction and other relief or reliefs as prayed for?*

viii. *Whether the Plaintiff is entitled to any mesne-profit? The date from which the possession of the Defendants is unauthorized, if any?*

ix. *Which of the Defendant/Defendants is/are liable to pay mesne profit, if any, and from which date?*

6. On the plea of want of cause of action, the learned Single Judge held that the lease as renewed came to an end, that no registered deed of lease had been executed thereafter, and concluded as follows:

> *"No written contract is there; no registered lease deed is there. The original Defendant was thus tenant by holding over and the tenancy was month to month. Therefore, such tenancy continues unless determined under Section 106 of the Transfer of Property Act, 1882. There is no termination of tenancy or determination of the same. Therefore, it is correct submission of Mr. Mukherjee, that there is no cause of action for filing a suit for eviction and recovery of possession since the tenancy is not determined*

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> *or terminated and is continuing one. In view of this position the suit cannot be said to be maintainable or discloses any cause of action and is liable to be dismissed."*

7. The learned Judge thus recorded that issues 1, 2, 4 and 5 stood decided accordingly, and that *"consideration of other issues becomes redundant in view of discussions made above"*, and dismissed the suit, directing the parties to bear their respective costs.

8. Learned Senior counsel appearing for the appellants has contended that the solitary ground upon which the suit has been dismissed is unsustainable in law. He has contended that, even upon the finding that the original defendant was a tenant holding over on a month-to-month basis, no notice to quit under Section 106 of the Transfer of Property Act, 1882 was necessary, inasmuch as the filing of a suit for eviction under the general law is itself a notice to quit upon the tenant. In support of such contention, he has relied upon ***(2008) 2 SCC 728 (Nopany Investments (P) Ltd. v. Santokh Singh (HUF))*** and upon the judgment and order dated 9th July, 2026, passed by a Coordinate Division Bench

of this Court in ***FAT 270 of 2023 (M/s. Xclusive Inn Private Limited & Ors. v. Anjana Guha & Ors.)***.

9. Learned counsel appearing for the respondent no. 11 has sought to support the impugned judgment and decree upon three grounds. He has contended, firstly, that the tenancy of the defendants being a monthly tenancy governed by the Transfer of Property Act, 1882, the same continued until determined in the manner provided by Section 106 thereof; that admittedly no such notice was served prior to the institution of the suit; and that, in the absence of determination of the tenancy, the suit disclosed no cause of action and has rightly been dismissed. He has contended, secondly, that the defendant no.7 has died and that no substitution has been made in his place. He has contended, thirdly, that the suit property has merged with an adjoining property, and that the owner of the said merged property has not been impleaded in the suit.

10. We have considered the rival contentions and have perused the impugned judgment and decree together with the materials on record.

11. The findings of the learned Single Judge are that the lease, as renewed, came to an end; that no registered deed of lease was executed thereafter; and that the original defendant thereupon continued in possession as a tenant by holding over on a month-to-month basis governed by the Transfer of Property Act, 1882, and no notice under section 106 has been given. Following ***Nopany Investments (P) Ltd. (supra) and M/s. Xclusive Inn Private Limited & Ors (supra)*** we hold that no notice under Section 106 of the Transfer of Property Act, 1882 determining such tenancy prior to the institution of the suit is required under the law.

12. In ***Nopany Investments (P) Ltd. (supra)***, the Hon'ble Supreme Court has held as follows:

> *"22. … In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this Court in V. Dhanapal Chettiar v. Yesodai Ammal."*

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13. The ratio of ***Nopany Investments (P) Ltd. (supra)*** has since been applied by a Coordinate Division Bench of this Court in ***M/s. Xclusive Inn Private Limited (supra)***. Dealing with a contention identical to the one which has prevailed before the learned Single Judge in the present case, namely, that no notice under Section 106 of the Transfer of Property Act, 1882 had been issued prior to the institution of the suit and that the suit must therefore fail, the Division Bench has held:

> *"59. On the strength of the ratio laid down in Nopany Investments (P) Ltd. (supra), the institution of the suit by the respondents cannot be faulted on the ground that no notice under Section 106 of the Transfer of Property Act, 1882, was issued prior to the institution of the suit, assuming one disbelieves the claim of oral notice. …"*
>
> *"61. … Filing of the suit itself is a notice to quit on the tenant on the strength of Nopany Investments (P) Ltd. (supra). …"*
>
> *"67. … Filing of the suit for eviction is itself a notice under Section 106 of the Transfer of Property Act, 1882. … The plea of holding over subsequent to March 16, 2018 by the appellants also does not impede a decree for eviction … as the appellants are liable to be evicted under the Transfer of Property Act, 1882, even in such a scenario."*

13. The decision of the Coordinate Division Bench in ***M/s. Xclusive Inn Private Limited (supra)*** and the decision of the Hon'ble Supreme Court in ***Nopany Investments (P) Ltd. (supra)*** are binding upon us.

14. We take up next the contention founded upon the death of the defendant no. 7 and the absence of substitution in his place. Under Order XXII Rule 4 of the Code of Civil Procedure, 1908 the Court may, in a fit case, exempt the plaintiff from the necessity of substituting the legal representatives of a defendant who has failed to file a written statement, or who, having filed one, has failed to appear and contest the suit at the hearing, and judgment may in such a case be pronounced notwithstanding the death of such defendant. In the suit before us the deceased defendant no. 7 neither entered appearance nor filed any written statement, and no relief severable from that claimed against the remaining defendants was sought against him. The absence of substitution in his place does not, therefore, affect the maintainability of the proceeding. The contention is rejected.

15. As to the contention that the suit property has merged with an adjoining property whose owner has not been impleaded,

the jural relationship of landlord and tenant between the appellants and the defendants is admitted. That being so, the non-impleadment of the owner of the property with which the suit property is said to have merged is of no consequence to the maintainability of the suit at the instance of the appellants. The contention is rejected.

16. Applying the law so settled to the facts of the present case, the institution of CS No. 279 of 2002 by the appellants operated, by itself, as a notice to quit upon the defendants. The tenancy of the defendants must accordingly be held to have stood determined, on filing of the suit. Having held that the solitary ground upon which the suit has been dismissed cannot be sustained, Rule 24 of Order XLI of the Code of Civil Procedure, 1908 provides that where the evidence upon the record is sufficient to enable the appellate court to pronounce judgment, the appellate court may, finally determine the suit. There is, therefore, no impediment on that score for us to the grant of a decree for recovery of possession.

17. It follows that the finding of the learned Single Judge that "there is no cause of action for filing a suit for eviction and recovery of possession since the tenancy is not determined or

terminated and is continuing one", and the consequential conclusion that the suit "cannot be said to be maintainable or discloses any cause of action and is liable to be dismissed", cannot be sustained. The decree of dismissal rests solely upon such finding. The same must, therefore, be set aside.

18. On the question of entitlement of the appellants to a decree of eviction and to the other reliefs prayed for, the position upon the findings already recorded is this. The suit property was demised to the original defendant for a term of thirty years which expired on 17th May, 1976. The lease as renewed by the letter dated 7th June, 1976 (Exhibit-F) expired on 14th April, 1993. No registered deed of lease was executed thereafter and rent was last accepted for the month of March, 1993. The defendants thereupon continued in possession as tenants holding over from month to month, governed by the Transfer of Property Act, 1882. That tenancy stood determined not later than the institution of the suit. Since the determination of the tenancy the defendants have continued in possession as tenants at sufferance, without right or title, and their possession is wrongful. The appellants

are, entitled to a decree for recovery of khas possession of the suit property against the defendants and all persons claiming through or under them.

19. The Plaintiff is also entitled to mesne profits and to the date from which the possession of the defendants is to be treated as unauthorised. A tenant who continues in possession after the determination of his tenancy is in wrongful possession and is liable to make good to the landlord mesne profits for the period of such wrongful possession.

20. Since the quantum of the mesne profits so payable cannot be determined upon the materials as they stand, we direct an enquiry into mesne profits. Clause (c) of sub-rule (1) of Rule 12 of Order XX of the Code of Civil Procedure, 1908 provides that in a suit for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree directing an enquiry as to rent or mesne profits from the institution of the suit until the delivery of possession to the decree-holder. The question which concerns the liability of the several defendants for mesne profits, shall be answered upon the conclusion of that enquiry, and is left open to that extent.

21. Mr. Sarosij Dasgupta, Advocate, Bar Library Club, (Contact No. 97489-19357), is appointed as Special Referee, who shall conduct such enquiry. The enquiry shall be taken up and concluded as expeditiously as possible and report to be submitted before the learned Single Judge. The learned Single Judge shall fix the remuneration of the Special Referee. The decree for recovery of khas possession shall not await the conclusion of the enquiry and shall be executable forthwith.

22. For the purpose of considering the prayer for *mesne* profits, CS No. 279 of 2002, is remanded to the Trial Court.

23. For the reasons as aforesaid, the appeal No. **APD 14 of 2025** succeeds and the suit stands decreed in part. All pending connected applications, if any, stand disposed of.

(ARYAK DUTT, J.)

24. I Agree.

(DEBANGSU BASAK, J.)